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It is apparent that a knowledge of world-affairs was never of more importance to Americans than today. The spirit of distrust which pervades the Old World is not without its effect upon our own country. How to combat this disintegrating tendency is a problem worthy of the most serious thought. Perhaps one of the best methods is the promotion of a better understanding of other nations through wisely directed educational effort.

The purpose of the foundation shall be the promotion of a better understanding on the part of American citizens of the other peoples of the world, thus establishing a basis for improved international relations and a more enlightened world-order. The aim shall always be to give accurate information, not to propagate opinion.

In fulfilment of this object, the First Institute was held at the University of Chicago in the summer of 1924. This series of volumes will include the lectures, delivered by foreign scholars at these Institutes, in essentially their original form.

GERMANY IN TRANSITION

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GERMANY IN TRANSITION

LECTURES ON THE HARRIS
FOUNDATION, 1924

By

HERBERT KRAUS

Professor of International and Public Law and Political Science
at the University of Königsberg



*Je ne propose rien, je ne
suppose rien, j'expose.*

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TO MY WIFE

PREFACE

The following essays, originally given as lectures in the period between June 24 and July 18, 1924, at the University of Chicago on the Norman Wait Harris Memorial Foundation, are given to the public at the request of the Committee of the Foundation in the sincere hope that they may contribute their small part toward the lofty purpose which the letter of gift of the Harris Foundation describes with the words:

. . . . The promotion of a better understanding on the part of American citizens of the other peoples of the world, thus establishing a basis for improved international relations and a more enlightened world-order. The aims shall always be to give accurate information, not to propagate opinion.

To my great regret the fact that I am traveling and away from my library has rendered it impossible for me to add references to the extensive literature on which my discussions are based, and by which they are supported, as I would wish to do. I was also unable to compile the Index, for which I am obliged to the University Press. Nor was it possible for me to consider in these lectures any event or fact which occurred after they were written.

My lectures are printed in the form in which they were given. I have added only a few state-

PREFACE

ments originally a part of them, which I was obliged to omit owing to lack of time.

Before these lines leave my desk I must express my warm appreciation to all those who have given me such efficient assistance both in Germany and America, including the secretariat of the League of Nations in Geneva; the Deutsche Liga für Völkerbund (German League of Nations Union), Berlin; Dr. Wilhelm Winkler, president of the Institute for Statistics of National Minorities at the University of Vienna; the Deutsche Industrie- und Handelstag, Berlin; Dr. Eugen Fischer, secretary and expert in the Parliamentary Commission of Inquiry of the German Reichstag; Professor Laun, Hamburg; Professor Stier-Somlo, Cologne, and last but not least Professor Quincy Wright, of the University of Chicago, and Francis Thayer Hobson, of Yale University, while I ask those I have not mentioned to pardon my not naming them individually, as they are so many.

These essays are dedicated to my wife, who translated the lectures with me, and who by countless suggestions helped me indefatigably in the accomplishment of this work.

HERBERT KRAUS

CHICAGO
July, 1924

TABLE OF CONTENTS

	PAGE
I. POLITICAL CONDITIONS AND TENDENCIES IN GERMANY	3
II. THE REPARATION QUESTION	33
III. THE LEAGUE OF NATIONS AND GERMANY	75
IV. SELF-DETERMINATION AND GERMANY	111
V. THE NEW GERMAN CONSTITUTION	153
VI. SEPARATISM IN GERMANY	189
INDEX	227

I

POLITICAL CONDITIONS AND
TENDENCIES IN GERMANY

I

POLITICAL CONDITIONS AND TENDENCIES IN GERMANY

One of the greatest honors which can be paid a scholar is to be requested by a university of a foreign country to lecture on the results of his research and study, and the invitation to lecture here on the Harris Memorial Foundation, extended to me as a representative of German scholarship, seems to me a most promising sign that the lamentable wall which the war reared between the different provinces of science is beginning happily to be leveled.

The aim of scholarship and science is universal. It is the truth in the largest sense of the word. There is no English, French, or German truth, but only one truth as such. The great scholars and the great discoveries belong to the whole world.

If the object of science is universal, it is the heritage of mankind, and the various national groups, down to that tiniest germinal cell, the individual scholar, dedicated to the investigation of truth, are but various departments of the world-

GERMANY IN TRANSITION

wide, co-operative intellectual association—self-governing and unfortunately still almost entirely unorganized provinces of the world-empire of science and truth. They constitute intellectual self-governing centers of labor and research, which by exchange of views and mutual criticism, by division of labor, and so forth, contribute their part to the great common purpose which inspires all.

The League of Nations has, as you know, appointed a commission for intellectual co-operation. In a report which the *inspecteur général de l'instruction publique*, Professeur Honoraire Julien Luchaire, presented to the League of Nations in 1923 on some problems of intellectual organization, we read the question: "What can be done that the nations may learn to know and appreciate each other better through the organs of their intellectual culture?" He answers the question as follows: "One of the best and simplest methods consists in increasing the personal contact between the intellectual élite of all countries."

I am actuated by the spirit of these thoughts when I tell you in these introductory words that I do not feel myself here the one who gives. The sentiment which dominates me today is that, in trying to impart something to you, I am at the

POLITICAL TENDENCIES

same time a recipient, and that all of us here assembled with the purpose of reconstructing an intellectual contact are serving our all-mother Science.

Besides this feeling, another weighs upon me heavily—a feeling of uncertainty and responsibility. In order to make you realize what I mean by such a statement, I shall have to be rather explicit.

German science stands today in a period of transition, and under an exceedingly high pressure. I can observe this especially in the various branches of law and political science with which I am closely connected.

The German sciences of law and political science are at present naturally occupied to a great extent in mastering the endless problems which the revolution and the Treaty of Versailles have produced—a quite Herculean task, for one feels the influence of this new epoch in the very finest complexes of public life, not only in the confines of constitutional law and the laws relating to the execution of the Treaty of Versailles, but also in the incisive tax-laws, labor laws, economic laws, and so forth. The reduction of government officials, a drastic measure which had to be adopted to cut down public expenditure, has recently

GERMANY IN TRANSITION

brought us face to face with new problems, especially with the question of the simplification of juridical procedure. The task of appraising accurately the German debts was for quite a while the center of consideration. The whole inner administration is undergoing a phase of extensive reform, as well as the school system and municipal administration. The revolution penetrated the most obscure recesses of jurisprudence, setting a new standard for many things, and thereby creating much confusion which was not altogether necessary, in my opinion. All these changes must first be studied, and scientifically construed, within the restricted limits allotted to theoretical science in Germany as everywhere else.

Besides these practical occupations another phenomenon which interests us here has manifested itself clearly in German science of law and political science. I refer to the attempt to master our present problems theoretically. Form and purpose of government, law and economics, law and ethics, the conception of revolution, the question of the continuity of the legal order, federalism and unitarism, state and individual, the ideal state—these are some of the problems which are being most keenly discussed and considered in Germany today. This development is primarily nothing

POLITICAL TENDENCIES

less than a partial manifestation of the trend toward abstract science, which shows itself very actively in all branches of learning and is especially noticeable in jurisprudence and political science. The German jurists are at present engrossed in a new theoretical investigation of the premises of the system of law, and this chiefly from a dogmatic point of view. The legal historism which swayed Germany for a century seems to have been more or less overcome. This process is now in full progress; the old foundations are shaken; almost nothing seems certain; a thousand tentative beginnings show themselves, but hardly anything appears finished.

The literary results of this renaissance, which seems to me in part to tend back toward natural law, and even toward the scholasticism of the Middle Ages, give but an insufficient record of the intensity of this movement.

International law in this regard is in a very curious position owing to the fact that the German scholars who really specialize in it can be counted on one's hands, without using all the fingers. The other people who occupy themselves with international law in Germany do so more or less as a side issue, and are rather few, owing especially to the lack of foreign literature, without

GERMANY IN TRANSITION

which a successful study of international questions is a futile task. For years it has been almost impossible for German libraries to purchase foreign books.

In this connection I feel impelled to express my appreciation for the generous fashion in which the Carnegie Endowment, as well as other American institutions, have presented German libraries and scholars with books which have been of decisive importance in the continuation of much scientific work.

These are some of the reasons which led me to speak of a feeling of uncertainty and responsibility in beginning these lectures. Isolation, lack of information, restricted activity in certain scientific circles, a universal fermentation in the principles of the scientific subjects to be considered, create but a poor platform for scientific explanations, especially when these are relative to acute international questions of today which will lead us no man knows where.

This uncertainty has also a social-psychological element from which a German scholar, as a German, finds it difficult to free himself, and arises from the fact that for many years we Germans have not been in sufficient spiritual contact with the rest of the world. Considering all these things,

POLITICAL TENDENCIES

I must ask myself whether I shall be successful in making you comprehend all that I would wish.

The best method by which to avoid the dangers of misunderstanding seems to me perfect frankness in my discussions. I do not wish to exaggerate or suppress anything, a promise which is only tempered by courtesy toward the land whose hospitality I have the honor to enjoy at the present time, and loyalty toward my own country.

The motto for these lectures will be "*Je ne propose rien, je ne suppose rien, j'expose,*" and my method, as far as possible, a social-psychological one.

All questions I deal with will be considered as much as possible from the German point of view. I mean by this, what Germany thinks regarding this or that vital question, and this is the spirit in which I would have you interpret my lectures. This is a very difficult task, almost hopelessly difficult in relation to the Germany of today.

The answer to a question about the true opinion or the real will of a country cannot be given directly, but is to be found through a complicated and often uncertain psychological analysis. I do not need to emphasize the fact that the public opinion of a country is not necessarily that of the government, parliament, or press. It cannot be

GERMANY IN TRANSITION

gauged by a sum in arithmetic, nor by polling the opinion of the majority of people regarding a given question.

What I refer to here comes under the significant and as yet quite unsolved problem of the importance of the number or unit of representation in political life.

In considering this problem one must realize clearly that the adoption of any form of vote or plebiscite can do no more than introduce a legal order in the process of forming the public will and opinion. It is also apparent that the different methods of voting contain an unequal measure of justice because they do not provide an equal guaranty that the opinion of a certain social group will find as unaltered an expression as possible through the medium of the vote in question. For instance, we consider the three-class system unjust which existed before the revolution in Prussia, and poisoned the political atmosphere there for decades. We consider the plural vote naïve. For many years universal, equal, direct, and secret suffrage—the system according to which the old Reichstag was elected—was regarded as the height of political wisdom and justice. The new German Republic has adopted the system of proportional representation, against

POLITICAL TENDENCIES

which criticism is becoming ever louder under pressure of the experience we have had in Germany and the different German "Lands" since its introduction. Now, most recently, there is an increasing demand from both the right and left sides for the introduction of quite a new system. A dictatorship, economic parliaments, or parliaments composed of the representatives of the different professions and trades are the three chief demands made in this direction.

No such system can be ideal. All, in fact, are no more than legal methods of imputation. They are all weak in the possible dissonance between the number and political potentiality. The real opinion of a social group, the real will of a state's people, is not necessarily—in fact, in the majority of cases is *not*—the opinion of the majority, but the opinion which arises as the result of the many divergent opinions in the social unit concerned. It is not majorities that must be sought if one wishes to find the will and the real opinion of a social group, but the really important, decisive factors in this group.

This is, of course, only of sociological-political, not of immediate legal, importance.

From the legal standpoint the will of the state organ, of the men who are legally competent to

GERMANY IN TRANSITION

construct and execute this will, is decisive. The will of the state is legally the will of the state organs in so far as they act according to law and constitution. The will of a social group, on the other hand, especially the real will of the people of a state, cannot be defined by such normative methods, for the reason that we are here concerned with facts—not with the question of what should be, but what really is. Even the most superficial observation of public events and developments teaches anyone that a consideration of both these different standpoints can lead to very different results.

Frank Vanderlip, in his much-read book, *What Happened to Europe*, which has also been translated into German, devotes a whole chapter to the question of "The Power of Minorities." He writes (p. 142): "One of the most startling impressions which I have received in Europe is that the majorities do not rule, and that sometimes minorities apparently almost inconsequently small may grasp power and wield it perhaps in a magic fashion." As a proof of the correctness of these very cautiously expressed words he refers to the Prussian Military party of antebellum days, and soviet Russia of today, as examples. He could have chosen his illustrations from any state in

POLITICAL TENDENCIES

the world. It is apparently a natural law of constitutional life that under the protection of every constitution, of whatever character it be, small groups take the state machinery in their hands to a greater or lesser degree, and, according to the fundamental political law of stability, retain it, owing to the sole fact of this possession. These groups in power continue to rule—that is, control the actions of the state—even when they can no longer be considered representatives, i.e., the mouthpiece of the will of a group.

We are not chiefly interested here in the will of the present government organs in Germany. What interests us more is the will and the opinion of the German people in this or that current political question.

The picture which results when we try to construe the real opinion and will of the German people of today is highly complex. We are often confronted by an uncertain, groping multitude of men, absorbed by the cares of existence, most deeply divided among themselves, and very often influenced in their actions by coercive outside factors.

This condition of dissension can be most clearly demonstrated by the present German party system, to which I shall now devote a few words.

GERMANY IN TRANSITION

Ever since about 1848, since there has been a party system in Germany, a strong tendency toward division has been noticeable, resulting, on the one hand, from the German's leaning toward individualism, and, on the other, from his predilection for organizations. Since the collapse after the war, this trend has increased tremendously. New parties and factions are constantly budding out from the old ones, or springing up from the damp swamp atmosphere of party politics. In this respect a condition of confusion exists in Germany now which is so great that only an expert is able to make anything out of the general chaos. None of the large old German parties have remained uninfluenced by this process of disintegration. It began, as is well known, with the Social Democrats in 1917 when the Independents seceded from them. The latter in their turn lost the group of Communists (Spartacists), or the "Section of the Third Communist International," as they call themselves, in 1918. Meanwhile, in 1922 the Independents rejoined the Majority Socialists, who then took the name *Vereinigte Sozialdemokratische Partei Deutschlands* (United Social Democratic party of Germany), except a few individuals who refused to join this movement, and appeared again as a separate faction in the last election.

POLITICAL TENDENCIES

Then came the turn of the *Deutsch-Nationale Volkspartei* (German National People's party), called, for the sake of brevity, "German Nationals," which is on the whole composed of the former Conservatives, and from which not less than seven or eight other groups have drawn away voters, among these especially the *Deutsch-Völkischen*, the *Deutsch Sozialen* (German Socials), and also the Hitler group, the so-called *Nationalsozialistische Deutsche Arbeiterpartei* (National Socialistic German Workman's party). The Conservatives have probably lost the smallest number through the Hitler party. This party, in which fragments from almost all the other parties have been included, and which addresses itself primarily to the workman, is composed chiefly of youths, and has not taken the monarchy as a slogan. Hitler distinctly characterized himself as a Republican in the Munich trial. The essence of the program of this party is an extreme nationalism, and hatred of the "November criminals," Marxism, and the Semitic race. In the latter respect they are united with all the national radical parties, including the German Nationals, whose statutes explicitly exclude Jews as members of their party. At the head of this anti-Semitic movement, which constantly grows more intense, is the *Deutsch Soziale*

GERMANY IN TRANSITION

(German Social) party, formed in the spring of 1921 by the so-called *Knüppel-Kunze*, that is, "big-stick Kunze."

Of particular interest is an analysis of the national-radical *Deutsch-Völkische Freiheitspartei* (German People's Liberty party), which was formed by former deputies of the *Deutsch-Nationale Volkspartei* (German National People's party), and which includes General Ludendorff among its members. This party also is not distinctly monarchical in its tendencies, and is quite anti-Semitic, very anti-Marxist, as is the Hitler party. In fact, it is hardly possible to find an essential difference between these two parties beyond a social one: the *Deutsch-Völkische Freiheitspartei* seems to be chiefly composed of the uprooted middle classes, former officers, unpoised intellectuals, bourgeois, and people of private means, who are unable to comprehend the present time and who attack the symptoms as the root of the evil.

It is often claimed that these and similar parties constitute the extreme right wing of the German party system. This is only correct in so far as nationalism and anti-Semitism are concerned, but is otherwise misleading, because the programs of these parties contain in part very virile socialistic and even communistic features.

POLITICAL TENDENCIES

In Germany they are consequently frequently spoken of as "National Bolsheviks." Thus I would describe our present political party system as a kind of closed circle. The Communists and National Radicals have not infrequently acted together. Another term in use for the latter is "German Fascists," and thereby, in my opinion, expression is given to a movement which is not only confined to Germany but has found an apparent realization for instance in Spain, and its culmination in Italy.

Not even the *Zentrum*, which now calls itself the *Christlich Soziale Partei* (Christian Social party), and the *Deutsche Volkspartei* (German People's party), have escaped this process of dissolution.

The *Zentrum* party, which appeared the most closely united and is the party of the German Catholics, lost its Bavarian contingent, which is there named the Bavarian People's party, chiefly as a result of the differences between Bavaria and the *Reich* (see my last lecture on "Separatism in Germany," pp. 208-23). And during the last election for the Reichstag, *Zentrum* candidates entered the election campaign in Bavaria as well as candidates of the Bavarian People's party. The *Deutsche Volkspartei* (German People's party) experienced a similar misfortune. This party is

GERMANY IN TRANSITION

the youngest of the big post-war parties. It is chiefly composed of those members of the former National-Liberals who under Stresemann's leadership could not decide to join the Democratic party. The essential difference between the German People's party and the Democratic party is that the former are monarchists. During the last election for the Reichstag the right wing of the German People's party seceded and established themselves as the National-Liberal Association because they felt that the policy of the German People's party was not far enough to the right.

These new branches are not the only type of the new constellation, however. Quite as large, or larger in number, are the parties which have sprung up with the probable destiny of again sinking back into nothing. As an example I refer to the so-called Minority party, the *Geusenbund*, the Tenants' party, the *Heusserbund*, the *Freiwirtschaftsbund*, and so forth.

The reports of the last elections do not give us complete information as to this dissension, as many of these political factions did not succeed in nominating even one candidate, and have in part tied themselves to combined election cartels (*Wahlkartiellen*). And in the last elections for the German Reichstag on May 4, 1924, no less than

POLITICAL TENDENCIES

twenty-three parties entered the campaign. At this point it must be especially mentioned that the two national-radical parties, the *Deutsch-Völkische Freiheitspartei* and Hitler's *National-Sozialistische Arbeiterpartei*, worked in a combined list. Of the twenty-three parties only twelve won mandates; the rest did not obtain any seats. This, in part, despite the fact that the party in question had received in the whole empire quite a considerable number of votes. Not less than 234,997 votes were cast for the Independent Socialists, for instance, but despite this they did not secure a single seat in the Reichstag for the reason that in no one district had they received the 60,000 votes necessary for a mandate.

It is no wonder that under such conditions in Germany there is constantly a cry for a leader, which has so far been in vain. Perhaps this is simply because there is at present no leader in Germany, though certainly it is not because the German people as such are unable to accept one. Obedience and discipline in the presence of a strong personality have been most correctly classified as German characteristics. No, a leader has not appeared yet for the reason that this epoch has not produced any man of large enough political caliber to direct the storm.

GERMANY IN TRANSITION

The absolute lack of leadership in Germany is illustrated by the fact that during the Hitler trial in Munich the men selected by the activists to be members of a German directory were persons quite unknown to the broader German public.

Under these circumstances naturally a great political helplessness and lack of ideas exists in Germany today. For years we have constantly heard the same refrain; only the accent and tempo have varied. In my opinion only two really big constructive ideas in the sphere of foreign politics have been framed in Germany since the war. I mean the opposition on the Ruhr, and the Rapallo treaty with Russia. Otherwise the foreign policy is almost entirely controlled by the Treaty of Versailles, its execution, and the situation resulting therefrom. Foreign politics also influence German domestic policies to a very great degree. It is sufficient to point as an example here to the influence which the execution of the Treaty of Versailles has had on social politics and social philanthropy, whose achievements are slowly but surely disappearing. One has only to think of the eight-hour day, which in spite of the German constitution and the Washington Labor Conference has almost ceased to exist in Germany,

POLITICAL TENDENCIES

or to consider the policy of our taxation, duties, railroads, and so forth.

At the same time, with the inexorable certainty of a natural law, political sentiment is being divided ever more sharply to the right and left. The movement toward the left came first. It was the indication, one of the determining factors, and the result of the revolution and collapse. Incidentally it manifested itself then less strongly than was expected.

The red tidal wave seems now to have subsided to some extent, although within the left parties as a whole, political sentiment is increasingly tending toward communism. There is a steady process of radical secession to join the Communists, in so far as the movement does not lead toward one of the groups such as the Hitler Party.¹ What is still more important, one has the impression that the Communists in Germany have somewhat lost their

¹ The Reichstag which was dissolved in 1924 contained, finally, after a series of greater and lesser changes 466 representatives: 171 seats for the United Social Democrats, 2 for Independent Socialists, 17 for Communists (190 altogether). The original election had provided 112 seats for the Majority Socialists, 81 for Independents, 2 for Communists (195 altogether).

Today there are in the Reichstag, according to the last election, 472 representatives: 100 seats for the United Social Democrats, 62 for the Communists, no seats for the Independents (162 altogether).

GERMANY IN TRANSITION

driving force. This may be partially the result of lack of funds, partially because of the sobering accounts from Russia, but also because of the fact that the adherents of this movement lack the leisure and the *élan* which is to be found in the extreme circles of the right. Bolshevism, with which Germany has been face to face several times, does not seem at the present moment to be an immediate danger, so far as one can prophesy.

On the other hand, it is unmistakable that the movement to the right and to national activism in Germany has so far been growing constantly stronger and more extreme. The returns from the elections of 1920 showed sixty-six seats for the German Nationals, none for the National Radicals. In 1924 the German Nationals had increased to ninety-six seats, to which are to be added the ten successful candidates of the *Landliste*, who are closely related to them. Besides these we must mention four German Social representatives and thirty-two representatives of the united *Deutsch-Völkische und National Sozialistische Arbeiter* parties. Nothing has furthered this movement more than the so-called "policy of sanctions," especially the invasion of the Ruhr, and incidents such as the execution of Schlageter.

POLITICAL TENDENCIES

This tendency to extreme nationalistic activity would have a very different significance, were it not supported by numberless groups large and small which are not only united, but which in part wage bitter opposition against one another, and take the wind out of one another's sails. According to a newspaper report of April, 1924, there are no less than seventy-three right radical associations at present in Germany.

A similar picture of disintegration is to be seen in the daily press, the political magazines, and in periodicals. It has become somewhat simplified under the influence of the financial and economic pressure which entailed the cessation of many newspapers and periodicals. According to a report lying before me, 245 daily newspapers were given up during the first quarter of 1923, 167 reduced their size, and 89 were combined with other papers. Only political pamphlet literature has continually and surprisingly flourished and steadily increased during the last few years in Germany.

The result of all these conditions is an aimless confusion, which might easily create an impression of political incapacity in the mind of an outsider. And yet one should be careful in this respect, I believe. It was a strange revelation when shortly

GERMANY IN TRANSITION

after the Treaty of Versailles the people of Germany from the extreme right to the left refused rigidly to comply with the clause relating to the extradition of the so-called "war criminals" to which Germany had bound herself by this treaty; and by virtue of their solidarity the people carried their point.

If I may venture a personal opinion here, I believe that the right cue at the right moment and the right man are all that will be necessary to create a unit from the many factions of the German people—a unit strong enough to sweep the rest of the people with it for good or evil, as may be the case.

* * *

States live, grow, flourish, decay, and die like biological beings. Their fate and their history are chiefly determined by the following factors.

First, by the strength of the pressure exerted from without on the state in question, as well as by the assistance and support it receives from without. We shall call these two cases the "outside factors." The so-called *États Tampon* (buffer states) and also bodies such as Danzig and German-Austria, which live entirely from the will of the victors of the world-war, are determined by these factors.

POLITICAL TENDENCIES

A second group of factors corresponds to those above but resides inside the state and people in question. The strength of resistance against the pressure from without, and further the ability to evade such pressure, belong to it. Just in this ability of evasion does real statesmanship find an opportunity to unfold itself in full mastery, and render the state immortal service.

To these inner factors directed toward withstanding outside influences is added a third pair, which not only are contained within the state but also manifest themselves there. I refer to the strength of the inimical forces directed against the state among its own people, on the one hand, and the ability of the state to cope therewith, on the other.

If the cases so far mentioned seem chiefly qualified to guarantee the undiminished power of a state, they are joined by a further pair which work toward the progress, development, and growth of the state. I mean the degree of strength within a state and its people to operate expansively, productively, and creatively both without and within—without, according to the still prevailing methods of today, chiefly by the exertion of pressure, but also by co-operation, persuasion, prestige, and so forth; within, by increase of

GERMANY IN TRANSITION

population and concentration of the productive and creative powers of the citizens, their apportionment to the state, use for the state, and so forth.

A premise for the efficiency of all these conserving and developing factors inside the state is, above all, a good organization of the state, and at the same time the development of a system by which the best forces among the people automatically and without friction attain the authoritative positions within the state. A further premise is definite aim and purpose in the state activities, a strongly developed patriotism on the part of the citizens, and, last but not least, a physically, physically, and morally sound, industrious people.

As far as Germany is concerned, one can speak today only to a very limited degree of the direction of the productive force toward the state, and its application for the state; for the Treaty of Versailles provides that all available surplus resulting from German work shall be directed toward the victors without.

We have seen, and shall see further during the course of these lectures, that certain things in German organization are not in order.

I must also state here that a certain weakening of the state idea and the sense of duty toward the

POLITICAL TENDENCIES

same on the part of the individual seems to have taken place in Germany—a question to which I will revert in my lecture on the German constitution.

What, however, is the condition of the most important premise: the ability of the German people to work, and their moral health?

I remember, during the peace negotiations, a stimulating and highly interesting discussion took place in Berlin at a great conference of experts on the conditions of the peace treaty, between two of our most noted leaders of industry on the question of whether the German people's ability to work was broken or not. This question seems in the meanwhile to have been decided in favor of the man who regarded the German people's ability to work as unbroken. I am repeatedly filled with astonishment at what—despite all that we have behind us in every field of endeavor, despite the closely linked, often apparently impenetrable entanglement of laws and the restrictions they impose, despite the bonds of the Treaty of Versailles, the uncertainty of our political situation, or our thoroughly confused financial market—I am filled with astonishment, I repeat, at what German industry and trade have ventured and accomplished!

GERMANY IN TRANSITION

Not so easy to answer is the question on the moral soundness of the German people. Certain ugly spots have become visible here, especially directly after the revolution, and later in the so-called period of depreciation, when the German paper mark died. Then German respectability seemed to be in danger of shipwreck.

I have struggled long and seriously with this question, which seems imponderable, and can only be answered intuitively, not exactly; and have come to the conviction that the German people, in spite of its physical health having suffered considerably, is still on the whole morally sound.

Every people has sick spots, but it can only be said that it is afflicted with a social sickness when the inability of the state to cope with this evil becomes manifest, and the evil has become habitual. What appears today most ugly in Germany seems to me partly the unliquidated remains of the revolution and collapse, but greater than that is the reaction against the terrible pressure resting upon Germany as a result of the Treaty of Versailles and the situation it has created. The rest belongs under the category of the fundamental phenomenon of mass psychology—imitation.

Is it surprising that during the period of inflation the German bourgeois began to speculate,

POLITICAL TENDENCIES

when, deprived of their fortunes, they knew that their salaries or wages (their income on capital had ceased) would be certainly worth nothing the following day?

Must it be considered a moral disease of Germany that some Germans attempted to hide their money in safe foreign countries, when no one knew what political and economic conditions in Germany would be tomorrow? Can one find evidence of a moral disease in Germany in the fact that German merchants showed a tendency to hold back their wares when they knew that the cost of replacing them would be higher than the price of sale; or that the attempt was made to charge foreigners fortunate in the possession of other currency higher prices than Germans?

I am far from approving of these and other practices which I shall discuss later, such as a tendency to extravagance in expenditure in Germany, but I believe that these are not evidences of moral insanity in the German people as a whole; they are merely accompanying symptoms of the great German sickness, which is called the Treaty of Versailles.

It is often and repeatedly claimed that foreign policy has precedence over interior policy; that the latter must adapt itself to the former. The

GERMANY IN TRANSITION

fate of Germany teaches us a corollary to this rule. It is new evidence for the often proved fact that the relations and conditions, the fate and history, of a state can be determined decisively by outside factors. Germany's example demonstrates how such outside factors at the same time may attain domination over the whole inner and outer life of a state, and how ominously fateful they can become for an intrinsically sound, vigorous people.

II

THE REPARATION QUESTION

II

THE REPARATION QUESTION

The note of December 30, 1916, which the Entente issued in answer to President Wilson's peace offer of December 21, contains among other things the following statement:

For the future the ruins caused by the German declaration of war, the innumerable aggressions committed by Germany and her Allies against the belligerents and against neutrals demand penalties, reparations, and guarantees.

In the French text it is *sanctions, réparations, garanties*. I add the French wording for the reason that the term "sanctions"—especially under the influence of the French so-called "policy of sanctions"—has since then attained an almost general use in preference to the word "penalties," although the Dawes Report, for instance, uses the word "penalties" again.

With this triptych of words (*sanctions, réparations, garanties*) the vocabulary of political catchwords has been increased by three terms which now dominate the discussions on the fulfilment of the peace treaties; and not only the political, but also the ethical, economic, and legal discus-

GERMANY IN TRANSITION

sions, although recently the term "guaranty" has been to a great extent superseded by the kindred expression "security."

For the student of international questions only the words "sanctions" and "reparations" are new, or, to be quite exact, almost new, as they formerly were used occasionally in international law. This is, for instance, very clearly the case in the Italian-French dispute over the confiscation of the French mail steamer "Manouba" in the Turkish-Italian War—a dispute decided by the Hague Court, May 6, 1913. We find here in the party pleadings the claim that the opponent be sentenced to pay certain sums of money:

À titre de sanctions et réparations du préjudice politique et moral résultant de la violation du droit international.

I said purposely that the terms are new, or at least almost new. This would be incorrect for the thing itself, however. Especially the idea of the possibility of punishing states is an old, greatly disputed, scientific problem. This applies also to the idea of responsibility, upon which, as we shall soon ascertain, the idea of reparation is based.

These three words—*sanctions, réparations, garanties*—are three of the great directive points upon which the Treaty of Versailles is con-

THE REPARATION QUESTION

structed; directive points which can hardly have been derived in the same measure and the same proportion from sincere motives, however. I shall revert to this later.

They are to be found in varying degrees in different parts of the Treaty of Versailles, especially of course in its so-called "reparation clauses," and then later in the negotiations for the fulfilment of these clauses.

The idea of "guaranty" has in the course of development advanced ever more and more into the political foreground. It has become, in fact, under the term "security," a cornerstone of the French post-war policy, for which classical evidence is given in the *French Yellow Book* of 1924 on the guarantees for safety against a German attack, and, finally, it has unhappily become merged with the other two ideas of sanctions and reparations, especially with the latter.

What interests us primarily here is the idea of "reparation" which also gave the reparation system in the Treaty of Versailles its name. The new element in this idea of reparation compared with that of former times is chiefly of a quantitative but also of a national character.

Formerly it was customary to speak of a "war indemnity," which the conquered had to pay in

GERMANY IN TRANSITION

money and land according to the choice of the victor. That is an old custom. But never in the course of history have such sums as those on which the Treaty of Versailles is based been even approximately demanded.

Coleman Phillipson, an English author, writes in his excellent work, *Termination of War and Treaties of Peace*, the most explicit book dealing with this problem:

It has been estimated that from 1795 to 1871 by a very moderate calculation the sum of 7,235,000,000 francs was extorted by belligerent states in the form of war indemnities. Of this less than one-eighth represents those imposed by France, notwithstanding the numerous victories gained by the French arms during that period; 1,135,000,000 francs by the various powers, and the overwhelming sum of 5,525,000,000 francs imposed by Prussia in her wars only of 1866 and 1870 to 1871. That is about three-fourths of the entire sum.¹

In this connection Coleman Phillipson quotes from the famous textbook of the South American international scholar, Calvo, the despairing exclamation: "*Devant telles énormités il y a lieu de se demander où s'arrêtera cette progression sans cesse croissante!*"²

¹ *Op. cit.*, p. 272. London, 1916.

² *Op. cit.*, IV (1886), 275.

THE REPARATION QUESTION

But not only do quantitative differences of enormous dimensions exist between the past and present practice of war indemnities and the regulation of the reparation problem, but we must also notice a difference in the conception of the same.

The war indemnity is the simple sequel to the fact of a lost war. "The spoils for the victors" is its foundation. Under the influence of Wilson's ideals this primitive idea did not suffice, however, to justify the tremendous sums which were to be imposed on Germany, and support was found in Article 1382 of the French *Code Civil*, which says: "*Tout fait quelconque de l'homme qui cause à l'autrui dommage oblige celui par la faute duquel il est arrivé à le réparer.*" ["Every action whatsoever of an individual which inflicts an injury on another obliges him by whose fault this has occurred to repair the same."]

This juristic process of reasoning was adopted and Germany's actions construed as a kind of civil "tort" which was based on the idea of "responsibility." The result is the famous Article 231 of the Treaty of Versailles.

On the other hand, it would in no way be just toward this article were its meaning to be regarded as solely or even primarily limited to establishing

GERMANY IN TRANSITION

the basis of the reparation claims from a point of civil law. The wording of Article 231, the caesura between it and Article 232, as well as the history of this article, exclude this, and prove that this connection with civilistic ideas meant something more than a mere transposition of a legal idea from one legal sphere to another, from national civil law to the sphere of international law. At the same time there is here, in my opinion, rather a transposition of a legal notion to the sphere of international ethics. I find support for this theory especially from Bernard Baruch, who speaks of "moral responsibility" in reference to Article 231 in his book, *The Making of the Reparation and Economic Sections of the Treaty of Versailles*,¹ and from Norman H. Davis, who announced before the Senate Committee: "My interpretation of the first article in the reparation chapter is that Germany is morally responsible."²

But Article 231 means even more than this; it denotes also a reversion to the old scholastic idea of the *justum et injustum bellum*, which in the course of time had been abandoned by the great majority of writers, and had never been

¹ *Op. cit.* (1920), p. 7.

² *Senate Document No. 106, 60th Congress, 1st Session*, p. 99.

THE REPARATION QUESTION

realized in the practice of states—an idea the history of which has been quite elaborately discussed by Vanderpol in a book well worth reading, *La doctrine scolaistique du droit de guerre* (Paris, 1919).

The authors of the Treaty of Versailles have, however, considerably exceeded the scholastic scholars in so far as they have connected this idea of *justum et injustum bellum* with the question of the war indemnity, and further by applying their theory at the same time retroactively to facts which lay in the past.

Consequently, "reparation," according to the idea which hovered before the Paris Peace Conference, means a war indemnity based primarily on international ethics, and secondarily on law. The effort to transfer the war indemnity from the sphere of force and arbitrariness to the spheres of ethics and international law represents the attempt to introduce a new conception in the rules governing international intercourse.

So far as *sanctions* are concerned, the note mentioned at the beginning of this explanation had apparently no connection with the definition of the word as conceived by constitutional law, which understands by the sanction of a law the legal command contained therein, the *ita jus esto*.

GERMANY IN TRANSITION

The most extensive use of this word, which represents the whole “machinery for compelling compliance with international law,”¹ was probably also not considered then. It appears to me that we are chiefly concerned here with a form of speech such as is especially used by French doctrine which places “sanction” on the same plane as “punishment” in the sense of the word as used in criminal law. And apparently the note of December 30, 1916, had in consideration, judging from its contents, penalties for the violation of Belgian neutrality, for Germany’s guilt *for* the world-war and for Germany’s guilt *in* the war—factors which the Treaty of Versailles accepts as its premises.

The Treaty of Versailles uses this expression differently. It applies it to the punishment of the so-called “war criminals” and the Kaiser. But besides this, the Treaty of Versailles has a number of other clauses of penal character, among them Article 231. In order to realize this it is only necessary to see the protocols of the so-called Guilt Commission (*Commission des Responsabilités des Auteurs de la Guerre*), which demands a *condamnation formelle* of Germany, and appeals for *sanctions pénales*. It is further necessary only to read through the text of the French “Program

¹ Spaight, *War Rights on Land* (1911), p. 461.

THE REPARATION QUESTION

for the Peace Negotiations," in which is mentioned as one of the points to be treated

. . . . stipulations of a moral character, recognition by Germany of the responsibility and premeditation of her rulers justifying the measures of penalization and precaution taken against her, solemn disavowal of the breaches of International Law and of the crimes against humanity.²

And so we are able to add a fourth idea to those already enumerated in this article: The idea of punishing Germany.

But quite apart from this there are a great number of other clauses in the Treaty of Versailles embodying the idea of *sanctions*. I do not refer so much thereby to the expression of the old idea of "Talio"—an eye for an eye, a tooth for a tooth, "a ton for a ton"—nor will I more than mention the attempts of the Covenant of the League of Nations relating to this question. I am here considering primarily the special reparation claims of Belgium, certain prescriptions concerning the Saar mines, and similar details.

In the period following the conclusion of peace, the idea of sanctions began to grow and became widely spread. It became more and more confused with the two other principles of reparations and guaranties, and it almost completely sup-

² Baker, *Woodrow Wilson*, III, 61.

GERMANY IN TRANSITION

planted the so-called "reprisals" which at present do not appear to be discussed any more, and whose character differs from that of sanctions in that it lacks a specific penal character, and exhausts its function in the compulsion of fulfilment. This tendency to the compulsion of fulfilment enters into the conception of sanctions; but all the consequences of a possible non-fulfilment agreed upon in the Treaty of Versailles are also frequently spoken of as sanctions. Thus the term "sanctions" is used in connection with paragraph 18 of Annex 2 following Article 244, an article on which the Ruhr invasion and the sanctions of the London ultimatum are known to be based. It appears, in fact, as if this expression "sanction" would become established as the term "for the whole machinery for compelling compliance with international law," and especially with the Treaty of Versailles. And yet it still distinctly retains a certain penal tendency and inclination. An inclination remains to speak only of sanctions when contemplating a reaction with punitive objects, in contrast to mere substitution or compulsory measures of fulfilment. This is, for instance, very clear in Poincaré's reparation plan, which he submitted to the Paris Conference early in January, 1923, by which he

THE REPARATION QUESTION

prepared the Ruhr invasion, and in which reparations, guaranties, and sanctions are dealt with in special sections.

Consequently, the Treaty of Versailles makes an attempt to affirm the old question of dispute as to whether states can be punished, and contains constructive material for a real international penal law—an international penal law which as a specific branch of international law would have three divisions: (1) objective international law on the punishment of guilty state officials, (2) objective international law on the punishment of states, and (3) the international part of the rules dealing with the conflicts between national penal laws.

It is as little my purpose here to follow the history of this idea in detail, especially in the League of Nations, as to cast its horoscope. Nor can I deal with that interesting question of outlawing war, nor dwell on the fact that Lord Robert Cecil's "Draft Treaty for Mutual Assistance" and "The Draft Treaty of Disarmament and Security," prepared by an American Committee numbering Professor Shotwell and General Bliss among its members, attempt to introduce the idea of crime in international law by declaring certain forms of warfare a crime.

GERMANY IN TRANSITION

But I must briefly draw attention here to the fact that in the Treaty of Versailles these new ideas were applied to events which had occurred *before* these new principles just mentioned were established. By this action a breach was made in one of the greatest legal principles governing all the laws of all times: the principle of the non-retroactive power of law, with which we are especially familiar from the formula in criminal law, *Nulla poena sine lege*.

The reason for my going into these complicated explanations here is that I wish to impress you with the theoretical confusion which exists in relation to the reparation problem. Three great intersecting thoughts, not clear in themselves and constantly confused with one another, meet in this question: the ideas of reparations, sanctions (penalties), and guaranties. In Article 231 of the Treaty of Versailles, which is placed at the beginning of the reparation clauses as their foundation, we are confronted by no less than four almost indissolubly entangled ideas. It would seem to me as if clear distinctions in this seemingly theoretical field would also have practical advantages for the reason that they would lead to a vast simplification of the reparation problem, and would considerably facilitate its solution.

THE REPARATION QUESTION

There are four theoretical possibilities by which the financial necessities which arise from a war can be met.

1. One can destroy an adversary, and try to pay one's self with his heritage.

2. One can let the vanquished opponent live, but burden him with indemnities, either in the form of a round sum of compensation or a sum which is estimated according to the amount of the damages. These damages can be differentiated as war *costs* and war *damages*. Perhaps it is possible to add a third category, the so-called "civil damages," as was attempted, for instance, in Brest Litovsk. This war indemnity can be estimated according to the capacity of the vanquished, for payment, and the latter is the system which is often called in Germany the system of the "milk cow," or the system of "the goose with the golden eggs."

3. One can shake hands at the end of a conflict, wipe the blood from sword and spear, go home, and each combatant nurse his own wounds.

4. One can try in co-operative work to restore the damages done as completely as possible.

All these theoretical possibilities just mentioned are degrees in a scale which ranges from the extremest nationalism to pure internationalism.

GERMANY IN TRANSITION

The first system of destruction was emphatically repudiated at the peace negotiations and after. I shall mention only a speech of Millerand's here which he gave in Spa, July 10, 1920—a speech which rose to a height of unusual objectivity: "The Allies realize that a Germany which has recovered its power of production is a necessary feature in the life of the world."

The third method is that which the Pope vainly suggested in his note of August 17, 1917, in which he said:

As for the damages to be repaid and the cost of the war, we see no other way of solving the question than by setting up the general principle of entire and reciprocal condonations which would be justified by the immense benefit to be derived from disarmament, all the more as one could not understand that such carnage could go on for mere economic reasons. If certain particular reasons stand against this in certain cases, they should be weighed in justice and equity.

The second and fourth methods remain. Among the numberless suggestions which the Reparation Commission submitted to the Peace Conference is one which begins with the following words: "The war costs of the states . . . are supported in common by the assembly of nations. A general régime is charged with the liquidation of these costs of war." Does not this sound like a classic illustration of the fourth alternative of co-operative

THE REPARATION QUESTION

work? Does it not sound like absolute internationalism? Unfortunately, this is somewhat deceptive, for this plan from the pen of the former French minister of finance, Klotz, then chairman of the Reparation Commission, refers only to the costs, not to the damages of the war which are of primary consideration here. And it further provides an arrangement between the Allies but not with Germany, who according to this plan would merely have participated in the payment.

The Treaty of Versailles chose the second method, and adopted the sharpest form of the latter: The German state shall continue to exist, the claims of Versailles shall find their limit in its capacity and the capacity of its citizens of payment. But only in this capacity. As a result of the inclusion of pensions and reparation allowances, according to the ideas of General Smuts and despite the persistent struggle of the American delegation, an amount then estimated as between \$20,000,000,000 and \$23,000,000,000, the reparation problem was reduced to the question formulated by the American expert Lamont, in the chapter on "Reparations" in Colonel House's well-known book, *What Really Happened at Paris*: "How much at her utmost capacity can Germany pay?"¹ This

¹ *Op. cit.*, p. 261.

GERMANY IN TRANSITION

is the formula on which the Dawes Report is also chiefly based. The claims of the reparations have precedence over all others until this capacity has been attained. They stand in the first place.

In short, the following can be said of the ideas upon which the reparation clauses in the Treaty of Versailles are based. They are an attempt to extract by a method of organized co-operation with the debtor Germany, declared guilty of and responsible for the world-war, as much as seems suitable and possible (from the point of view of a world-ethics affirming Germany's right to existence), to satisfy the individual claims of all the victors.

In the interest of truth, certain very unpleasant things have to be added here, however, and thereby we must revert to the confidential "Report to the Imperial Cabinet on the Final Conditions of Peace," which Count Brockdorff-Rantzau and his peace delegation wrote en route between Versailles and Weimar, June 17, 1919, in the same distressing night in which we were also engaged on the train in translating the terms of the conditions of peace, which were presented to us only in English and French. This report strongly recommended the refusal of these peace conditions. This short report, which today reads partially

THE REPARATION QUESTION

like a prophecy, characterizes the final and then unchanged conditions of peace with the four lapidary words: unbearable (*unerträglich*), unfulfillable (*unerfüllbar*), law-infringing (*rechtsverletzend*), insincere (*unaufrechtig*).

These four words express the sentiments which today still fill an overwhelming majority of the German people toward the Treaty of Versailles, and in a greater degree toward some of its later developments.

I shall not attempt to prove the single details of this statement here, for my purpose is only to provide a premise for the expression of the German attitude toward the reparation problem.

For this purpose it is impossible, however, to pass over four points. I must revert briefly to the so-called question of guilt for which Americans seem to prefer the term "responsibility for the war," and its significance in relation to Germany's attitude on the reparation problem. I must consider, secondly, the problem of reparation and German liberty. Thirdly, I must emphasize the psychological pressure and the importance which the weight of the reparation has for Germany. And, finally, I must add a few words on the actual effects of the reparation régime, and how, with time, it has developed in Germany.

GERMANY IN TRANSITION

First, as to the so-called question of responsibility for the war—the guilt question. I know that on the conclusion of peace the greater part of the world was convinced of Germany's guilt for the war, and that a very considerable part is still of this opinion. I am also aware that since the Treaty of Versailles has come into force many regard this question with Lloyd George as a "cause judged," to repeat an expression used by the latter in London on March 3, 1921, to the German minister of foreign affairs, Dr. Simons. I also realize that there is little sympathy for this question today in foreign countries—in other words, this question is apt to be found boring. Consequently, it would probably be the part of diplomacy to ignore it. But should I do so I would be untrue to the promise I made in my first essay; for no one can fully understand the present political state of mind in Germany, especially that relating to the question of reparations, who is not informed as to Germany's attitude toward the question of responsibility for the war. The German Peace Delegation fought to the last against the acknowledgment of guilt in Article 231 as the Germans interpret this article. It is generally maintained in Germany in opposition to this thesis that the *world-war was a*

THE REPARATION QUESTION

necessary explosion of the ever increasing imperialism which has dominated our era.

This struggle on the guilt question is primarily an affair of honor for the Germans, a reaction of the German nation against the moral and criminal condemnation which has herein been filed against it. Besides this, the opinion continually gains ground in Germany that Article 231 is the heart of the whole Treaty of Versailles, on which the latter stands or falls. One refers often in this connection to the frequently quoted words of Lloyd George, who declared in the debate on the guilt question which took place between him and Dr. Simons in London March 3, 1921, that "for the Allies, German responsibility for the war is fundamental. It is the basis upon which the structure of the treaty has been erected, and if that acknowledgment is repudiated or abandoned the treaty is destroyed."

Arguments and support are also derived from another remark of Lloyd George's, in the *London Times* on December 23, 1920, three months before the remark quoted above:

The more one reads the memoirs and books written in the various countries of what happened before August 1, 1914, the more one realizes that no one at the head of affairs quite meant war at that stage. It was something into which they glided, or rather staggered, or stumbled [italics mine].

GERMANY IN TRANSITION

Taken all in all, one must say that the question of responsibility for the war becomes more and more the central point from which large circles in Germany regard the Treaty of Versailles. The struggle on the guilt question has become almost a species of crusade for them. They will wrestle with this question with German thoroughness, and work over it until the last attainable document is found, appreciated, judged, and classified. They will proceed with this crusade, quite unconcerned about what the world says and how it reacts. And finally, the Germans will be essentially influenced in their attitude toward foreign political problems by this struggle—a fact which also plays a rôle in Germany's attitude toward the League of Nations, and which must equally influence the German attitude toward the reparation problem which is so closely associated with the question of guilt.

This great German struggle against the guilt question is for me an unusually instructive illustration of what a rôle honor, which is so often misused and substituted for personal will or unwillingness in the language of diplomats, can really play in the life of states. The acknowledgment of guilt in Article 231 seems to me like a smarting wound which burns in the soul of the German people.

THE REPARATION QUESTION

The second point, which I must not fail to mention at least briefly and in a particular aspect, is the question of the significance of the reparation system for German liberty.

The Germans have been repeatedly assured that their inner legislation will not be interfered with and that their independence will not be curtailed. In fact, however, Germany is bound almost entirely hand and foot by the Treaty of Versailles, as already mentioned in the first lecture, and above all by this system of reparation. And these bonds have become ever firmer, so that the claim that Germany is free in regard to its inner legislation is not even formally correct now. In my essay on "The New German Constitution," I will explain how the organs of reparation have in fact become the highest legislative organs of Germany, and how Germany is now facing the necessity of passing laws which have been dictated to their smallest detail.

What was above a question of honor is here a question of the liberty, or, in other words, the sovereignty of Germany. For what, fundamentally, is everything which has been said and claimed in the name of sovereignty? It is at the bottom nothing else but an active manifestation of the impulse of state liberty toward its subjects on one

GERMANY IN TRANSITION

hand, and toward the other members of the society of nations, on the other. Sovereignty, for states, reduced to its simplest terms means, in my opinion, nothing else than what the enjoyment of liberty means for individuals. Immanuel Kant, the greatest scholar my home, Königsberg, has produced, writes: "There is nothing more terrible than that the actions of a man should be controlled by the will of another"; and again: "The man who is dependent is no longer a man, he has lost this rank, he is no more than the appurtenance of another person."

If honor is a point which plays at least the same rôle in the life of states as in the experience of individuals, how much more true is this for the impulse of states toward liberty, for their desire for sovereignty? If this be so, one can see without further explanation the psychological importance of the fact that one of the most populous states of Europe can, to a large extent, move only according to the commands of foreign powers.

A third very important fact for the explanation of the attitude of Germany and the Germans toward the reparation question is found above all in the many currents of psychological pressure weighing upon Germany.

THE REPARATION QUESTION

One of the chief reasons for this pressure can be perceived in the continual uncertainty and insecurity of conditions, which manifest themselves in the most varied directions. It has often not been known what interpretation the victors would put upon this or that provision of the ambiguous and often unintelligible Treaty of Versailles. The history of the treaty is the history of a struggle of interpretation, very interesting legally but at the same time very painful. New claims of not inconsiderable height, and often devastating for the state budget, were also constantly presented. The cost of the army of occupation is a particularly good example of this. According to official German statistics, Germany paid over 5,000,000,000 gold marks for the occupation on the Rhine from the time of the Armistice until December, 1923. And besides this we have had to pay a monthly sum of 1,200,000 gold marks for the 200 members of the Allied Control Commissions—whereas the 4,000 officers of the German army only cost 688,500 gold marks a month. Above all, however, until the London plan of payment, Germany stood under the pressure of not knowing what would finally be demanded of her, and at the same time in constant fear of a new manifestation of the so-called “policy of sanctions.”

GERMANY IN TRANSITION

To this uncertainty a growing feeling of hopelessness with regard to Germany's position was added. The impression and conviction that Germany could do nothing to avert a terrible destiny gained in force.

The Germans have also perceived how the fulfilment and interpretation of the Treaty of Versailles has deviated in different directions from its premises, even if one takes, not the Wilson points, but the Treaty of Versailles itself, as such a premise. They saw how the fragments of Wilsonism still contained in the Treaty disappeared, how the Entente became loosened, and thereby the guaranties which remained after the United States had separated from it were weakened. They saw especially how measures of sanctions, reparations, and guaranties were ever more frequently and sharply applied for the same political purposes, until German economic unity was severed by the Ruhr invasion, and under the policy of positive pledges and sanctions the German economic body began to bleed to death. This is especially so since the era of the so-called "Micum treaties," treaties between the *Mission Interalliée de Contrôle des Usines et des Mines* and the representatives of the local German mining industry. This hopelessness drew its arguments

THE REPARATION QUESTION

further also from the fact that year-long attempts to come to some possible arrangement remained without results. I have counted approximately forty suggestions for reparation plans. I was not able to determine the even greater number of reparation conferences.

Is it a wonder that the impression was created that the world was simply incapable of mastering this problem of reparation, and even of providing indisputable fundamental facts and statistics of payment on it? How would it otherwise have been possible for such contradictory statistics on Germany's capacity, on what Germany had performed, on the financial results of the Ruhr occupation, and on the cost of the occupation to be spread through the world?

The resulting nervous strain rested so heavily on the Germans that one was not infrequently reminded of the atmosphere which we experienced just previous to the collapse of the autumn of 1918, and the period of the Armistice and peace negotiations, together with the hunger blockade, whose inexorability and deteriorating influence can be realized only by one who experienced it personally. I felt, therefore, as if someone had spoken from my own soul when I read the words of the Swiss Colonel Wildbolz in a report

GERMANY IN TRANSITION

of January, 1924, to the Red Cross: "One can scarcely comprehend how people avoided going mad."

And now, finally, a few words about the present conditions in Germany as they have developed under the influence of the financial situation. They have indeed been made known in other countries by foreign investigations, conducted in part with noteworthy success and a great desire for objectivity. This is so much the case that foreign countries seem in part to be better informed about us than we are ourselves. The best example of this is the Dawes Report.

Foreign countries have especially become acquainted with our existing misery in connection with their broad-minded assistance to our children and poor.

The chaos of our currency and of our state budget, for the regulation of which questions the Dawes Commission was especially appointed, and all the outer signs of disintegration are known. But something still remains which is not at all or only incompletely known, and information on which is inaccessible to the outside observer because it is not to be expressed by statistics, or because the facts of these statistics have not yet fully exerted their effect. Many of the Germans

THE REPARATION QUESTION

themselves have very different and vague opinions on these questions and their influence. I have read with dismay, for instance, of a great decrease in the birth-rate, and of an ever increasing wave of emigration from Germany—an emigration three times as great as in the last year before the war, and five times as great as the last five-year average. The decrease in the substance of the German economic property and economic income can be measured only in part. It is known to have been estimated that the German people earn only one-third of what they did formerly, and in regard to wealth, one has to point only to the blood-letting which the decline of the mark and the Third Emergency Tax Law inflicted on broad circles, especially the middle class, which is always the backbone of the people.

There are certain indications here which can be followed, but they fail signally when applied to the question of what, for instance, disappears from the closets without being replaced, and the necessary repairs which are left undone. I think in this connection of the pitiful condition of a part of the German houses which are dropping to pieces bit by bit, and I hear from official sources that houses have to be constantly abandoned now for fear of their collapsing.

GERMANY IN TRANSITION

I had a very discouraging illustration of this myself some months ago. On my daily walk through Königsberg, I found a large apartment house in a poorer part of the city decorated by a sign which read, "Danger of collapse. Do not enter." Yet this house teemed with families of people who had no other shelter than this.

The housing problem which, as is known, has been a very real one in almost all countries since the war, is particularly bad in Germany. During the war hardly anything was built, and since then there has also been comparatively little building, owing, among other reasons, to the fact that the government kept down the rents by law, and few people could afford to build houses, or even repair those they owned. The misery has been increased by an added population from the ceded territories, and the people expelled from the Ruhr and Rhine—according to official German statistics of May, 1924, more than 140,000 people. The municipal authorities have the right to quarter people with any owner of a house or apartment in which the rooms exceed the occupants in number (children are only counted as half). This forcible introduction of strange and often highly inharmonious elements in almost every home is undoubtedly one of the severest infringements on

THE REPARATION QUESTION

personal liberty and happiness, and has aroused more individual resentment and bitter feeling than almost any other measure.

The statistics which are known regarding assistance to the poor are not exhaustive, as much goes on here under the surface; for the necessity of the present has brought good as well as much evil, in that the spirit of charity has noticeably increased in certain circles in Germany.

Even less to be expressed in numbers is what the German people have lost by the fact that their scholars are without the necessary books, lack the material for experiments, are absorbed by the troubles of the day, and in some cases devote themselves also to other than scientific occupations. It might be mentioned here that during the period of the depreciation of the mark, university professors as well as all other government officials had to stand in line for hours several times a week to draw their salaries, and then rush at once into town to invest their money before it lost its value.

The whole misery of our scholars was brought back to me when a member of the University of Chicago told me that he had written asking a German scientist for a certain dissertation and that he had not received it yet. I told him that

GERMANY IN TRANSITION

he would probably never receive it, as since the war we have been unable to print dissertations except in very rare cases. The most we can do is to print a single sheet containing a brief synopsis of the dissertation—one typewritten copy of the dissertation is sent to the University of Berlin, one presented to the library of the university in which it has been written, and one to the faculty to which it was submitted. The same American criticized the German scholars for not quoting foreign scientists. I could only assure him that the vast majority of us would be very glad to do so were we or our libraries able to afford foreign books in sufficient numbers since the war.

It is probably owing to the non-consideration of these and similar facts that foreign countries generally estimate our prosperity and economic capacity higher than we do in Germany. To this are added certain indications which are but deceptive. I refer primarily to the much-discussed high living and luxury of a small but very conspicuous group of Germans. This is also noticeable in other countries such as Italy and Switzerland. Apparently the German government is not strong enough to suppress it, though it inspires at least as great a degree of resentment and disgust in Germany itself as in foreign countries.

THE REPARATION QUESTION

As far as the apparent luxury is concerned, it can be explained in part by the hysterical fear of the possession of money which still dominates Germany, and the clearly existing fever of expenditure. This has somewhat abated under the influence of the Rentenmark, but is not dispelled. Many a couple whom one sees somewhere eating well and drinking wine do not own as much as their own bed, and perhaps little more than the clothes on their backs.

The following incident was very instructive to me in this connection. A woman I know went into town to buy undergarments for her children. The price of the articles was higher than the sum at her disposal. As she left the store she saw a candy shop next door. Not having enjoyed any sweets for long she returned home without undergarments but with candy, as she had to get rid of her money before it decreased in value.

In Germany the word *Scheinblüte* (mock prosperity) has become very common for the conditions existing there. But this also seems to be in the process of passing since the introduction of the Rentenmark, the shortage of money connected therewith, and the strangulation of unsecured credits. When I left Germany there was a decided atmosphere of crisis in industry and commerce,

GERMANY IN TRANSITION

increased by some great strikes, almost no money to be had, everywhere helplessness and discouragement, and the courts overworked with cases of bankruptcy and the introduction of so-called *GeschäftsAufsicht* (business supervision), an anything-but-agreeable novelty which the war introduced in Germany. Many of the firms concerned were highly respected ones, and but recently were regarded as absolutely sound. According to what I have read since leaving Germany, this process seems to be rapidly continuing. Similar symptoms could be observed in agriculture, and added to this was a slow, not entirely explicable, increase in the cost of living.

Only when one considers all these features can one understand the attitude of the German people toward the Dawes Report. For, on the face of this Report, which also regards the utmost capacity of Germany as the limits of her reparation duty, no one will maintain that it promises Germany an easy future.

From the great number of objections which have been raised against this Report, I would like to emphasize the following:

1. In this Report, which reminds one strongly of the London plan of reparations, the utmost capacity of Germany is greatly overestimated.

THE REPARATION QUESTION

Our industry, for instance, will hardly be in a position to raise the 300,000,000 gold marks demanded of it annually. There is even less prospect of being able to draw 950,000,000 gold marks annually out of the railroads, which do not pay anything at present; not to mention the tremendous sum which Germany has to pay annually besides the amounts just mentioned. For this sum the following revenues are pledged as collateral securities: alcohol, tobacco, beer, sugar, and customs. So that under the Dawes plan Germany would not be able to introduce prohibition if it wished to.

The discrepancy between what is expected of Germany and its capacities is most clearly revealed by the fact that the annual taxable income per capita in Germany, according to the most recent official calculations, amounts to 400 gold marks. Of this income more than 100 gold marks are paid annually for taxes in Germany. In Great Britain and Ireland the annual taxable income per capita amounts to 1,200 gold marks; in France, 820 gold marks; and in Belgium, 1,000 gold marks.

In regard to the German *Volkseinkommen* (people's income), it was estimated in 1913 by Helfferich at 45,000 million gold marks. In 1924 it was estimated according to recent official figures as only 25,000 million gold marks—opposite

GERMANY IN TRANSITION

which is a considerable increase in the cost of living, and tremendous income taxes, which Imperial Minister Luther estimated as amounting to 27.7 per cent of the whole income before the acceptance of the Dawes Report.

2. The Report is based on the principle that a minimum of existence must be granted to every German, but does not state what this minimum is. Three hundred gold marks per capita does not seem to me an adequate sum.

3. The Report, which frequently characterizes itself as an "intermediate plan," does not provide the final solution so necessary from an economic and psychological standpoint, nor does it, above all, suggest a final reparation sum.

4. The German freedom of action, especially in economic fields, will be unbearably curtailed by this Report.

5. The settlement planned destroys Germany's competitive ability in the world-market.

6. The "transfer proceedings" expose Germany to the danger of an economic foreignization.

7. The activity necessary to the existence of German trade must suffer seriously through a fiscal management of the railroads.

8. The Report leaves no margin for the fulfilment of social duties on the part of Germany, for

THE REPARATION QUESTION

the provision of those incapacitated for work; and it forbids in particular the compensation of the people ruined by the depreciation of the paper mark.

9. By this plan the debt of the German state is partially shifted to certain private groups.

10. The Report gives no guaranty that the policy of sanctions will really cease, but on the contrary leaves the possibility of their application open.

11. The Report does not include the so-called points of honor in its calculations, that is, the amnesty for the people punished, a permission for the people expelled from the Ruhr to return to it.

And yet this Report was not even known in its text, but only according to its broad lines and general tendencies, before the opinion was voiced from almost all sides, and even from authoritative quarters, that it must be recognized as a sufficient basis for negotiations. A great number of specified votes in this direction lie before me. The voices against it came from the radical camps.

We may attempt to sum up the chief reasons for this almost general affirmation of the Report, apart from the general enervation in Germany, as follows:

i. Primarily there is satisfaction that the Report starts from a premise of Germany's eco-

GERMANY IN TRANSITION

nomic unity, and consequently takes the cessation of the Ruhr occupation for granted.

2. The plan further starts from the premise that Germany's exports shall be taken as the basis for the reparation.

3. The plan also provides that Germany be given a breathing space.

4. It anticipates an international loan of 800 million gold marks, which, however, is often considered too small a sum.

5. Stabilized currency and regulated budgets are the chief conditions for the reparation plan.

6. The plan affirms Germany's right to existence.

7. It makes an attempt by its own provisions of sanctions and securities to free the process of reparation from the system of sanctions and guaranties, as they have latterly developed, to treat the reparation problem as a purely economic problem, and to raise it, as it were, out of a political atmosphere. Unfortunately, however, this is done in a very imperfect fashion.

8. The influence of the Reparation Commission is pushed back and that of real experts placed in the foreground.

9. All the debts of the Treaty of Versailles will be combined in one item.

THE REPARATION QUESTION

We can perhaps reduce the general sentiment in Germany on the Dawes Report to the following formula: The sincere attempt to treat and solve the reparation problem as an international economic and financial problem is apparent in every word of the report. Even though the first part refers in its introduction to Germany's "primary moral obligation toward those who have suffered so severely through the war," its dominating motive is at the same time the idea of the solidarity of the war burdens, and the idea of the solidarity of reciprocal interests.

In the letter from the chairman of the First Committee of Experts to the Reparation Commission, dated April 9, 1924, accompanying the Dawes Report, this statement appears:

With these principles fixed and accepted in that common good faith which is the foundation of all business and the best safeguard for universal peace, the recommendations of the committee must be considered not as inflicting penalties, but as suggesting means for assisting the economic recovery of all the European people, the entry upon a new period of happiness and of prosperity unmenaced by war.

This is true internationalism; and this Report rises to an admirable ethical universalism when it declares:

Deeply impressed by the sense of its responsibility to the universal conscience, it bases its plans upon those principles

GERMANY IN TRANSITION

of justice, fairness and mutual interest in the supremacy of which not only the creditors of Germany and Germany itself, but the whole world, has a vital and enduring concern.

There is a much-discussed book in Germany by Oswald Spengler, written in the atmosphere of the *Götterdämmerung*, with the title: *Der Untergang des Abendlandes* (*The Decline of Western Civilization*).

If the problem of reparation can be carried out in the spirit of the foregoing words of the Dawes Report, if only men who are filled with such a spirit and take this spirit as their only maxim are intrusted with its application, then Spengler will be proven wrong, and Lloyd George and Nitti and all others who see war and destruction in the political heavens of the present will be mistaken.

But will the Dawes Report be right with its prophecy of "a new period of happiness and prosperity unmennenaced by war?" These words are an expression of the young, world-conquering optimism which we Europeans admire and sometimes envy in the Americans.

Under the present conditions, Germans are hardly able to hope for anything like happiness from the execution of the Dawes Report. As long as the reparation system of the Treaty of Versailles is not *fundamentally* changed, as long as it is

THE REPARATION QUESTION

based on the above-mentioned alternative 2 of Germany's utmost capacity, the question of a greater or lesser happiness does not come into consideration for Germany. But a far more inexorable, fateful question weighs upon the German state, the German people, and the German nation: "To be or not to be."

III

THE LEAGUE OF NATIONS AND GERMANY

III

THE LEAGUE OF NATIONS AND GERMANY

Whosoever approaches the complex of problems designated by the expression, "League of Nations," is confronted by multifarious forms almost impossible to disentangle, and an inseparable confusion.

Lauded and abused, defended and condemned, relegated to the dead and praised as the great hope of the future, the Geneva League of Nations suggests the words of Schiller's Prologue to *Wallenstein's Camp*: "By party favor and by hate confused, his image staggers down through history."

The chief reason for this, in my opinion, is that the League of Nations has not only one Janus head, but turns a thousand faces toward the observer, and thereby it presents itself as a typical product of the epoch in which it was created and has its place. I refer to the short period of our present, which is filled with a powerful intellectual battle—a battle of ideas which is so much more tremendous because it represents a contest between the past, stained with the world-war, and a new future, a new social order, the extension of the

GERMANY IN TRANSITION

idea of law throughout the world, the awakening of a world-consciousness, the dawn of a world-permeating state ethics. And in the train of all these things the vision of world-economics, world-mutualism, world-co-operation, world-culture, attracts us, a vision which sounds in the last chords of Beethoven's *Ninth Symphony*:

Freude, schöner Götterfunken,
Tochter aus Elysium,
Wir betreten feuertrunken,
Himmlische, dein Heiligtum:

Deine Zauben binden wieder,
Was die Mode streng geteilt;
Alle Menschen werden Brüder,
Wo dein sanfter Flügel weilt.

Seid umschlungen, Millionen!
Diesen Kuss der ganzen Welt!
Brüder—überm Sternenzelt
Muss ein lieber Vater wohnen.

But these visions begin to disappear when we try to seize them, as the ghosts in Hades faded before Odysseus. This battle of ideas, these labor pains of a new era, are for us time-bound contemporaries a painful experience, a tragedy for individuals, groups, peoples, mankind, and the age.

This contest, in so far as it does not occur within the states, as a constitutional struggle, or revolution, but extends over the each-for-itself of

THE LEAGUE OF NATIONS

the states in a common sphere, is chiefly waged by three great ideas: the struggle is primarily between the ideas of nationalism and internationalism, but in the second rank universalism is also engaged in the combat.

In speaking here of nationalism and internationalism I do not intend to discuss the complex of questions with which I shall have to deal in my discussion of the principle of self-determination, but now I must at least emphasize that we have here a typical example of the practical importance of correct definitions and the exact use of words in political discussions, especially an exact distinction between the words "state" and "nation."

Nationalism and internationalism are problems which have relation to the states, not to the nations, of the earth as their object. The principle of nationality can only be included among these problems as an especially important modern part of this complex of questions.

Nationalism, as I understand this word of many meanings, is the principle of being-in-one's-self (*Prinzip des für-sich-Seins*), the individuality of a state in relation to other states. Its life-principle is state egoism; its aim is its self-preservation. Self-sufficiency does not belong to it necessarily; on the contrary, the impulse of states to over-

GERMANY IN TRANSITION

reach their boundaries is in a high degree a feature of modern nationalism. This impulse is usually designated by the term "imperialism." Imperialism is not necessarily expansionism. It can, for instance, be confined to hegemonic tendencies. Imperialism has recently manifested itself especially as economic imperialism, which is instructively illustrated by certain provisions of the peace treaties, bearing the traces of the Paris Economic Conference of June 14-17, 1916.

Nationalism operates in competition and in opposition to other states. For this reason war is the most emphatic form of its operation; for here two states encounter each other in the strongest affirmation of their being-in-themselves and for-themselves. In this fact nationalism finds its antithesis to internationalism.

Internationalism and nationalism have one factor in common. Both affirm the state, and both treat of relations between states. Whereas, however, nationalism signifies an antagonism between the various states, internationalism means co-operation, mutualism, and concord in the relations of the states to one another.

Internationalism is an expression of the being-with-each-other of the different states (*Prinzip des mit-einander-Seins*). It means the tendency

THE LEAGUE OF NATIONS

to introduce a higher order in the next-each-other of a multitude of state individualities with intersecting and contrary interests.

Internationalism defines the spheres of the sovereignty of states toward one another, divides their various duties among them, and above all assigns them their share in the execution of common tasks, which it at the same time appoints.

By eliminating the restrictions which the various state boundaries make for legitimate private enterprises and extending them over several states, it at the same time opens the way for the formation and pursuit of larger, even universal relations in trade, finance, science, religion, culture, etc., for mankind, that is, for the manifestations of an unpolitical universalism in different directions. But it does this all from the standpoint of the state, not from a higher level, and thereby distinguishes itself fundamentally from universalism.

Internationalism is above all not pacifism. The premises are different. Pacifism strives for a definite object in the world—peace. Internationalism is essentially a problem of the division of competencies; yet both circles may converge slightly.

Internationalism is not necessarily state-altruistic. There is state-egoistical internationalism. International law demonstrates this on every page.

GERMANY IN TRANSITION

Its most conspicuous characteristic is still today that it is predominantly constituted as individual law analogous to national civil law.

It contains a number of prescriptions, however, which ultimately are not intended as a guaranty of the state's individuality, but to serve social groups independent of state boundaries, or the interests of some universal idea—for instance, free economics, trade, faith, etc., of mankind. It is only necessary to remember the numerous international treaties of a humanitarian nature.

There is, therefore, at present a large group of manifestations of an egoistic state internationalism, and opposite them a small group of manifestations of altruistic internationalism.

Universalism in the sense in which I use the word here is the principle of the unity and union of mankind, or of smaller groups of men not divided by states but extending over the spheres of several states within humanity. In contrast to nationalism and internationalism, universalism stands beyond and apart from the state. It may direct its eyes toward the state, though universalism never derives its standpoint from the state but from a higher level. It appears in various forms, as ethical, legal, social, religious, cultural, and finally as political universalism.

THE LEAGUE OF NATIONS

In two respects it is engaged in the present conflict of ideas. For one thing it makes its demands on humanity, the time, the states, and the community of nations. It is ethical universalism, for instance, which requires that man should respect his brother in man, and that the states should also act according to this rule. It is universalism which furthers the independence of science, conscience, and confession, which considers it intolerable that international law should tolerate the slaughter of hundreds of thousands of the citizens of a state by its government, on the grounds that this is a so-called inner concern of the state in question, and at the same time should legally sanction a town's being bombarded by a foreign government because the home government in question has delayed to pay some debt. And finally it is universalism when universal pity and charity are aroused because in some distant corner of the world men are starving or freezing. This is one of the great sides of universalism. Another of its manifestations is of a more practical and technical nature. Mankind is organizing itself; organizing itself as private associations of an economic, charitable, and social nature. It organizes itself as the public opinion of the world. It organizes itself for the fulfilment of universal

GERMANY IN TRANSITION

tasks. And finally, it organizes itself hesitatingly, in a fragmentary but actual world-constitution.

When an international commission distributes clothes and food contributed by people from all possible parts of the earth in a district visited by famine, it no longer fits fully under the heading of internationalism. When a so-called international court or commission dismisses or admits the claim of a private person based on a provision of the Treaty of Versailles; when an international commission establishes a boundary, or when it administers some question directly under it, this is more than internationalism, it is the first, still half-hidden, silver ray of a new organized universalism in the world—a ray of light which arouses the question: Will Kant's idea of the rights of men as citizens in a world-cosmopolitan system actually become a reality? Will there sometime be rights of men and citizens which have really been proclaimed, and whose recognition is demanded by all mankind? Will the law of nature yet be law in the legal sense of the word? And finally, will an actual world-law evolve?

* * *

It is not difficult to recognize these three ideas of nationalism, internationalism, and finally uni-

THE LEAGUE OF NATIONS

versalism, though indeed everywhere most closely interwoven with one another, in the League of Nations Covenant and in the subsequent attitude of its organs.

The idea of internationalism seems to confront us most immediately in the Covenant. Noyes very rightly called the Covenant "a Magna Charta of new internationalism" in his very readable book, *While Europe Waits for Peace*.¹ Articles 24-25 aim to make the League of Nations the center of the whole international net of organization.

It is also an expression of the idea of internationalism when the Preamble of the Covenant enjoins the League of Nations "to promote international co-operation." The prescription of new duties for the League of Nations by the shy and reluctant Article 23 of the Covenant, etc., is also an expression of internationalism.

But it is chiefly a state-egoistical internationalism which we find in the Covenant. This, indeed, accounts for the prominence given the guaranty to members of the League of mutual spheres of power and competence. Before this the idea of fulfilling other services more directly useful for their citizens, science, trade, culture, etc., was forced into the background. This form of inter-

¹ *Op. cit.*, p. 74.

GERMANY IN TRANSITION

nationalism is further to be seen in the constant obsequiousness to and recoil from the conception of sovereignty.

Naturally state-egoistical considerations have their chief place where indications of nationalism are found in the Covenant.

Nationalism, indeed, seems to be the idea which has so far exerted the most intense influence on the formation of the Covenant, and even more on the conduct of the League of Nations, especially in all political questions. One has the impression that the delegates to the League of Nations, who in contrast to the officials of the League appear there as instructed representatives of their governments, are often, even in matters pertaining solely to the League of Nations, unable to free themselves from national considerations. In this connection it is especially interesting that on October 1, 1920, a delegate in the Assembly broached the thesis: "The sentiment of the Assembly should be multi-national, not international."

A collective nationalism of the victors of this world-war reveals itself sharply wherever the League's organs are invested with duties in the fulfilment of the peace treaties, and especially when those most closely associated are intrusted with their execution.

THE LEAGUE OF NATIONS

A hidden expansionistic and imperialistic nationalism is further found in the prescriptions of the Treaty of Versailles in regard to the mandates and in the fact that the Covenant has succeeded in making only the vaguest and most deficient provisions on disarmament and execution—provisions which the organs of the League have so far helplessly tried to reduce to concrete terms.

But also universalism, chiefly cultural, charitable, and ethical, peers uncertainly and shyly from the Covenant, and makes demands restricting the nationalism and internationalism of the League of Nations and its members. In this respect it is agreeable to ascertain that the work of the League of Nations has been more assiduous and successful than in any other direction of its labor, more successful than was to be expected from the wording of the Covenant.

Peace, if I understand the spirit of the Covenant correctly in this respect, is no longer to be considered a legal good of the member-states of the League, but a legal right of humanity. And as the Preamble of the Covenant represents the rule of justice as one of the purposes of the League of Nations, the voice of humanity also is heard in the catalogue of duties in Article 23, and it permeates in collusion with social ideals the most

GERMANY IN TRANSITION

satisfactory part of the treaty, Part 13, which relates to labor.

* * *

It is not my plan to follow these thoughts farther, and to analyze the League of Nations Covenant in detail, but rather to consider from the premises just explained the German attitude toward the League of Nations.

In spite of an apparent similarity in the situations of the United States and Germany toward the League, and in spite of some problems which are in fact the same for both powers, the League of Nations really means something very different for the United States and for Germany.

After reading a number of clever articles which treat of the compatibility of the Monroe Doctrine and the League of Nations, and in spite of the *jus singulorum* of Article 21 of the Covenant in favor of the United States, the unwilling attitude of the United States toward the League of Nations seems to me, apart from a trial of constitutional strength, to consist, above all, in a manifestation of the great American "principle of isolation," of which the Monroe Doctrine is the most important and vital subdivision.

The foreign policies of the United States are, in my opinion, in so far as they are modeled on

THE LEAGUE OF NATIONS

great and enduring principles, not only determined by the Monroe Doctrine but governed by three closely related principles, each of which has an independent historic course, and which all order themselves in the just-mentioned principle of isolation.

To these principles, the policy "to adjust and settle international disputes through mediation and arbitration" has, as is known, been added since August 29, 1916, by a constitutionally highly interesting declaration of Congress.

The three subprinciples of the principle of isolation are, first, the principle of the avoidance of alliances—a principle which the guaranty pacts with England on the one side and France on the other missed killing by a hair's breadth.

The second subprinciple is the maxim of the *de jure* recognition of *de facto* governments in consideration only of the actual circumstances. This principle has apparently not found its way back into the policies of the United States. While all the other governments are recognizing the Russian soviet government in quick succession, the United States continues to refuse to do so in application of the principle of "the clean hand" which President Wilson proclaimed against the Mexican Huerta.

GERMANY IN TRANSITION

The third subprinciple of the principle of isolation is the Monroe Doctrine, with its two subdivisions, namely, the prohibition against non-American powers and the injunction against any political action of the United States toward European states. It is the reawakening of this latter declaration, the death of which has been commonly supposed since the Spanish-American War, which seems to me to explain primarily the present attitude of the United States toward the League of Nations.

Despite President Wilson's address of January 22, 1917, in which he demanded the extension of the Monroe Doctrine over the whole earth, Europe never can and never will have its Monroe Doctrine. In particular there will never be a Monroe Doctrine between the single members of the European state group. Europe cannot have it as long as and for the reason that a principle of nationality, uncertain and impractical frontiers, inimical neighbors, and similar factors exist there.

As far as Germany is concerned, her foreign policy, which we have already characterized as to a very great degree compulsorily influenced, is not so independent as is that of the United States with regard to the League. Whereas the United States remains aloof from the League of Nations of its

THE LEAGUE OF NATIONS

own volition, Germany is still excluded from the latter, has so far had no official opportunity to join, and does not know today what attitude the member-states would take toward her admission. It is quite clear, for instance, that Germany could not, and never would wish to enter the League against the will of France, even if the overwhelming majority of the other nations were in favor of Germany's becoming a member. She further does not know what rôle she would play in the League, nor how she would be treated by the members. It is moreover uncertain whether Germany would be given a place in the Council, a place which is almost unanimously demanded in Germany as a condition of its entrance.

Besides this, the relation of the League to Germany is that of an organ for the execution of the Treaty of Versailles. It has a close connection, therefore, with the main line of German foreign policy, expressed by the phrase: "away from Versailles." Public opinion in Germany is decidedly divided on the question of whether admission to the League of Nations would be harmful or beneficial for this foreign policy. While the question of the division of Upper Silesia was pending, the advocates of the League did not cease to claim loudly that the decision of the Council

GERMANY IN TRANSITION

would perhaps have been more favorable if Germany had been a member.

Furthermore, Germany is in a peculiar position toward the League of Nations, owing to the fact that Article 1 of the Covenant stipulates that the admission of new members shall be on the condition that they shall give effective guaranties of their sincere intention to observe their international obligations, and accept such regulations as may be prescribed by the League in regard to military, naval and air forces, and armaments. There is a strong and widely spread apprehension among the German people that as a result of this prescription a definite and voluntary acknowledgment of the Treaty of Versailles, and especially of Article 231 relating to the question of guilt, would be demanded, or at least that Germany's admission to the League could be regarded as an implicit acknowledgment of the same. Anything of this nature would be decidedly repudiated, and it is therefore also a cause for especial satisfaction that the question of responsibility has not been raised again either in the peace treaties with the United States or China, or in the Treaty of Rapallo with Russia. Nor did this question play a rôle in the decisions of the German-American Mixed Claim Commission in Washington.

THE LEAGUE OF NATIONS

I have already mentioned above a few of the chief points which are raised against the League of Nations in Germany. Apart from these the Germans have not had sufficient opportunity yet to occupy themselves thoroughly with the question of the League of Nations, partly because the organization which would chiefly come in consideration for this purpose, the German League of Nations Union, lacks the funds for broadly planned propaganda. Besides which, other questions such as reparations, sanctions, and similar problems have so far completely occupied the foreground of current foreign politics in Germany.

The opinion on the League of Nations in Germany is as far as can be ascertained quite divided. I do not believe I would be justified in speaking of a German public opinion in this matter today. The parties of the extreme right and left naturally repudiate the idea. The opinion of the members of the German People's party is divided. The *Zentrum*, Democrats, and Social Democrats, much as they criticize the Geneva League of Nations, approve of the idea of a League, and would certainly vote for Germany's joining the Geneva League should the Reichstag be called together to give its decision on this subject. Consequently, with the present party combination, there would

GERMANY IN TRANSITION

probably be a simple majority in favor of joining the League in case a vote were taken. Should a change in the constitution be involved in such a decision—which is legally questionable—it would probably be refused, for in the present Reichstag there would hardly be a two-thirds majority in favor of Germany's joining the League of Nations. Whether the German people, in case of a plebiscite, would share the opinion of its Parliament seems to me dubious.

The fact must not be overlooked, however, that so far the introduction of the League of Nations in Germany has been rather unhappy. The decision on Eupen-Malmedy-Monschau caused the greatest resentment. The Upper Silesian decision enlisted many opponents against the League. The toleration of the conditions in the Saar, the decision in the Memel question, and the attitude toward Danzig in certain cases have had a similar effect. It is often pointed out that the League of Nations was passive when Germany was unjustly and illegally treated, as, for instance, by the occupation of the Maingau and the invasion of the Ruhr.

The representatives of the German government have in general expressed themselves cautiously in regard to the League of Nations, none of them

THE LEAGUE OF NATIONS

negatively, however. The latest statement made in the Reichstag on March 1, 1924, by the German minister of foreign affairs, Stresemann, a member of the German People's party, seems to me of great importance in this direction. He said:

The government of the Empire stands on the basis of the idea of the international solidarity fundamental to the League of Nations. This idea is only imperfectly realized in the present Covenant of the League of Nations. The attitude of the League of Nations so far has often greatly injured Germany's interests. Despite this, however, the German government does not refuse to join the League of Nations on principle.

The actual attitude of the German government toward the League of Nations can be characterized as quite friendly. In fact, as is often forgotten, Germany applied once for admission to the League of Nations, namely, during the peace negotiations. German representatives have taken part in the League's work whenever invited by the League, and under whatever conditions imposed upon them. We have consequently attended a number of international conferences organized by the League of Nations, for instance, the Financial Conference in Brussels, the Paris Passport Conference, the Traffic conferences in

GERMANY IN TRANSITION

Barcelona and Geneva, the White Slave Conference, also the Hygienic Conference, and even a foreign political conference, namely, the Conference on the Non-Fortification of the Aaland Islands, October 10-20, 1920.

One must not be misled by these facts, however, for the number of the institutions organized by the League of Nations to which Germany does not belong, although it should do so in the interest of the whole, is far greater. I will be silent on the absence of Germans on the staff of the secretariat, but one cannot overlook the fact that the Commission for Disarmament, the Commission for Mandates, and the Financial Committee work without Germans, in contrast, for instance, to the International Labor Office.

Germany further submitted the Wimbledon case and the question of the German tenants in Poland to the verdict of the Permanent Court of International Justice. By sending the international treaties concluded by Germany to be registered in the secretariat, according to Article 18 of the Covenant, even explicitly expressing its willingness to do so in a note of August 11, 1921, the German government assumed of its free will an obligation to which it was not bound by treaty toward the League of Nations.

THE LEAGUE OF NATIONS

On the other side, Germany has often made the unsuccessful attempt to stimulate the activity of the League of Nations by notes and protests. As an illustration it suggested that the League of Nations should judge the troublesome and awkward flag incident in Berlin. In the case of Eupen-Malmedy it protested to the League of Nations. It appealed to the League with the well-known mandate note of November 12, 1920, with its protest note against the occupation of the Ruhr, with numberless complaints against the actions of the Saar Commission, in the case of Upper Silesia, and so forth.

The German mind is, as a matter of fact, not at all inaccessible to the idea of an organized federalism, for the Germanic Confederation of 1815 was at bottom nothing else than a particularistic League of Nations. Its statutes remind one in part very strongly of the Covenant of the League of Nations.

The history of internationalism, especially the movement toward the League of Nations, has many German names among the leaders, foremost among them Immanuel Kant, who, by the way, introduced the term League of Nations, and of whom has been written in the best German book on the League of Nations:

GERMANY IN TRANSITION

The new in Kant is twofold. The penetration of the whole question with the idea of law and methodical investigation in the spirit of criticism. . . . Kant's influence in the development of the idea of the League of Nations is the greatest which has been exerted by any single thinker.¹

Besides Kant are found names like Herder, Wieland, Schelling, Johann Jacob Fries, Karl Christian Friedrich Krause, Schlegel, Novalis, Schleiermacher, the young Fichte, and others, not to mention the representatives of our own time such as the Baroness von Suttner, Alfred H. Fried, Wehberg, Schücking, and Quidde.

A comparison between theory and practice in this subject results very negatively for practice, however. No one can maintain that German policies lent themselves to strong international tendencies in the pre-war period of imperialism. As little, however, could the same be said of England, France, Russia, Italy, or the United States. There is no object, however, in drawing comparisons in this direction between the imperialistic actions of the states of the world. The only positive results which can be recorded of the pre-war time are in the realm of cultural international-

¹ Veit Valentin, *Geschichte des Völkerbundesgedankens in Deutschland* (Berlin, 1920), p. 35.

THE LEAGUE OF NATIONS

ism in the broadest sense of the word. Apart from the achievements of the Hague conferences and all that was connected with them, this fact manifests itself in a number of non-political treaties. In all these questions Germany was fully abreast of the other big powers. Her name rarely was lacking under one of the more important collective treaties—the most important exception was perhaps the Hague Opium Convention of 1912. The Treaty of Versailles unfortunately has severed not a few of these threads.

Two subjects require special consideration. I refer to disarmament and arbitration. The accusation is often heard that Germany has hindered international progress by her backward and intransigent attitude, created a hostile atmosphere, and taken thereby a historic ethical guilt upon herself. The present moment is particularly unfavorable for pursuing this line of thought farther. Not that I would consider it inopportune to discuss it, however. The reason is far more that, within the compass of the great German political *enquêtes* over pre-war politics and the question of responsibility for the war, these two problems have been discussed by the Reichstag, and the material relating to them at this *enquête*

GERMANY IN TRANSITION

is on the eve of publication. It contains, besides other material, the entire political correspondence relating to the Hague Conferences, which will appear in the extensive publication of German political documents;^x and also the material which was then submitted to the first subcommission of the Commission of Inquiry of the Reichstag on the question of the attitude of Germany at the two Hague peace conferences. There were men of all political convictions in this Commission, including Germany's leading pacifist, Professor Schücking. The Commission seems to have worked with German thoroughness, and it did not rely solely upon the declarations and reports of the two eye-witnesses, Professor Zorn and the former director of the legal department of the Foreign Office, Dr. Krieger, but also collected a number of reports, among them one from Dr. Hans Wehberg, the well-known German internationalist. This Commission arrived at a *Pronunciamento* which is, in my opinion, so important that I should like to read you the last remarks, without identifying myself with them, however. This would be very unscientific, and would also be impossible if

^x *Die grosse Politik der Europäischen Kabinette 1871-1914.*
“Sammlung der diplomatischen Akten des auswärtigen Amtes.”
Berlin.

THE LEAGUE OF NATIONS

only for the reason that the declaration has not failed to produce contradiction in Germany.

Summarizing, it should be said that the German government rendered valuable assistance to the cause of arbitration along the lines which it decided to follow, but that, just as in the question of limitation of armaments, so also in dealing with efforts both of official and of private circles for bringing about international understanding and arbitration, it would have been desirable to avoid the unjust suspicion that the German government was opposed in principle to arbitration, thereby making it impossible for interests abroad that were inimical to Germany to cast suspicion upon German intentions. For this reason it would probably have been desirable for the German government to choose a form of reply that better expressed its readiness, and from the very beginning to take the lead in this matter as in fact it intended to.

But the authors of the note of June 16, 1919, cannot be conceded the right to raise charges concerning the attitude of the German government in the matter of arbitration, just as little as they can be granted this right in the question of limitation of armaments. If it is true that other states outwardly seemed more favorable to the idea of a world treaty of arbitration, it is also true that they made reservations by which the practical realization of what they theoretically and demonstratively professed was made exceedingly doubtful. The charge is unwarranted that the attitude of the German government at the Hague conferences was determined by her having decided upon a plan of strategy that had for its object the acquisition of world-dominion. Had the German government harbored such a dark plan, it

GERMANY IN TRANSITION

would surely have been able to cover it up all the more surely by acquiescing in the proposals for disarmament and international arbitration.²

This decision, based on an exact knowledge of the official documents, presents a somewhat unexpectedly favorable opinion, in contrast to what has so far been generally accepted even in Germany. For until now it was also believed in extensive circles in Germany that Germany, situated in the center of Europe and filled with peripheric fear, had refused a number of offers of arbitration, had behaved very cautiously toward the idea of arbitration, and consequently acted as a retarding element in this respect. In my opinion, however, one must add at the same time—without an exact knowledge of the official documents mentioned above—that the attitude of Germany toward the arbitration movement was in fact not so intransigent as it is today generally represented. Germany suggested the International Prize Court, for example. She suggested also a world-court at the second Hague Conference for Exchange Questions. She agreed to an arbitration clause in the Treaty of 1911 with France about Morocco and Equatorial Africa, concluded an obligatory

² Translation from the monthly periodical, *Die Kriegsschuldfrage*, II (May, 1924), 171.

THE LEAGUE OF NATIONS

arbitration agreement with England on July 12, 1904, which was twice renewed, and consented that the noted Casa-Blanca dispute with France should be decided by the Hague Court. She seems to have been very much afraid of a world-arbitration treaty, however.

Be this as it may, it now all belongs to the past. A noticeable change in the German foreign office could already be perceived during the war. In numerous cases of dispute, especially cases concerning submarine warfare, Germany suggested settlement by arbitration.

Since the collapse, the idea of arbitration has dominated Germany. The German suggestions for the establishment of a League of Nations presented to the Versailles Peace Conference by the German delegates contain a detailed plan for a court of arbitration, which goes farther in some respects than the constitution of the League of Nations' Court. Whenever Germany becomes involved in a controversy now she offers settlement by arbitration.

The climax of her recognition of the idea of arbitration is so far the *Schieds- und Vergleichsvertrag* (Treaty of Arbitration and Conciliation), concluded December 3, 1921, with Switzerland, a masterpiece of legal technique and permeated with

GERMANY IN TRANSITION

a strong belief in the idea of arbitration. It is to be regretted that the German government has apparently not been successful as yet in concluding similar treaties with other powers.

In the memorandum with which the German-Swiss Treaty was submitted to the Reichstag, this recognition of the idea of arbitration is particularly emphasized by the following words:

The government of the German Empire considers one of its most important duties in foreign politics to strive universally to the end that international questions of dispute shall be decided by way of arbitration.

So much for the problem of Germany and the idea of arbitration.

The question has been asked me whether Germany is inclined to "greater self-sufficiency or more international co-operation" since the war. I believe that in spite of many indications tending to produce a negative opinion, I can affirm the latter. This seems to me also quite a matter to be taken for granted in a country whose threads of connection with foreign lands have been so radically severed by the war, for whom the reconstruction of these threads, or even the forming of new ones, is made so difficult, which has suffered psychologically and physically so deeply under isolation, and which so vitally needs the rest of the world.

THE LEAGUE OF NATIONS

But I hasten to my conclusions.

The League of Nations has become a great international administrative organization with unpolitical duties, and has herein worked quite successfully. The direction of this occupation has now become inseparably connected with the idea of the League of Nations. It is today the center of a great part of the old and new international organizations concerning which we possess among others a most instructive book from the pen of an American, *Public International Unions* (Boston, 1916), by Paul S. Reinsch. It is also potentially a means and starting-point for the formation of the public opinion of the world in political as well as non-political questions. It might, according to its idea, some day play a similar rôle as world-conscience. But its individual character, in which it differs from all other organizations, is derived from something else.

In a program pamphlet, *Vom Wesen des Völkerbundes* (*On the Nature of the League of Nations*), which appeared in 1920, I formulated the nature of the League of Nations in the following words:

The realization of the interest of humanity in the sway of quiet and order, or what means the same thing, of law in the world, is the great object of the League of Nations.

GERMANY IN TRANSITION

And on this premise I reached at that time the following definition of the League:

The League of Nations is an attempt to unite the idea of an organized world legal order in cases of international conflicts with the self-dependency and the independence of its members.

The true idea of the League of Nations is the extension of the idea of legal order throughout the world. This ideal finds its culmination in the idea of the realization of law—in arbitration. In this thought all mankind is united today. All the cabinets of the earth recognize it, whether their states are members of the League of Nations or outside it.

Arbitration is the soundest idea contained in the Geneva League of Nations, and the strongest, most deeply rooted in the minds of mankind today. Had the League of Nations dedicated its chief strength to this purpose, perhaps by the addition of certain cultural rôles and charitable tasks, and kept out of so-called political questions, it would, in my opinion, probably be farther today. *Eppur se muove!* (But it does move!)

The intercourse between states inside and outside the community of the League of Nations is today actually more filled with the ideas of the

THE LEAGUE OF NATIONS

League than often appears to many of our contemporaries tuned to the present.

The winning plan of Mr. Edward Bok's Peace Award uses the wonderful expression of "the sheer force of social international gravitation." "International gravitation," and this in all spheres—political, ethical, cultural, economic, and social—this seems to me in fact to be a sign of the times, which stands in the background of the struggle between internationalism, nationalism, and universalism described in the beginning of this lecture.

It is the direction of the dynamic movement of our era. Men have long ceased to move in small, hard social circles. These little circles have begun of themselves to turn, and now a whole great social solar system rotates and seeks its axis, a solar system quite as wonderful and worthy of reverence as the starry heavens above us.

We can observe this process in the sphere of politics; there also it has begun to turn in the system. The states themselves have begun to rotate and together form state systems, which now move with and against one another. Alliances, international unions, confederations of states, international courts of arbitration and justice, the League of Nations, but also its antithesis, war, are the types which here most directly confront us.

GERMANY IN TRANSITION

Nationalism, internationalism, and universalism are in this process three of the greatest principles which set the rhythm of this dynamic movement: nationalism which separates states from one another; internationalism and universalism which draw them together, one to turn them in the same direction, and the other to establish their centers and finally perhaps to dissolve them in some far-away future in political universalism.

This all still seems a wild chaos. We miss the poles, the uniform direction, the great rhythm and harmony.

What can and must take place is a vision of destiny. But the jurist beholds in this great process of evolution above all the reign of law, which is here realized as an ordering process which defines and compensates, gives direction and corrects.

The student of law may be permitted to end this discussion by looking up to legality with the hope of its extension throughout the world. The continuation and development of arbitration, of cultural, social, and economic co-operation, a firmly organized world-federalism, strong, free states, in or beside the Geneva League of Nations, and the establishment of a well-balanced equilibrium between internationalism, nationalism, and

THE LEAGUE OF NATIONS

universalism by the methods of law and in the form of a legal order—that is the final solution.

My last words shall be a quotation from Eike von Repko's *Sachsenspiegel*, that great law book of the year 1230, which gave the Germans an individual legal terminology. In the Prefactio Rhythmica of this book Eike von Repko wrote in the quaint language of his time:

Got uns selbe leret
Daz wir recht sin alle
Unde unrecht uns missevalle.

IV

**SELF-DETERMINATION AND
GERMANY**

IV

SELF-DETERMINATION AND GERMANY

When I consider the complex of questions which is suggested by the popular phrase, "self-determination of peoples," or the older term, "principle of nationality," my thoughts often revert to a sentence in George Washington's Farewell Address:

Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies the causes of which are essentially foreign to our concerns.

Are not these words as applicable to the problems designated by these two phrases as if they had been spoken in reference to them, or at least in reference to the original significance of the principle of nationality, a significance subdivided into two minor principles for which the formula, "Every nation a state, the whole nation a state," has been found?

These two principles, that of the "right of nations to exist as states," and that of the "repudiation of subnations," are lacking in the list of actual American political problems. In saying

GERMANY IN TRANSITION

this I am of course not considering the Philippine question. Never, for instance, in the history of the United States has the principle of nationality provided the reason and justification for the exceptionally successful policy of expansion which the United States has followed. The Civil War was no war of nationalities, but the struggle of two brothers incensed over an economic and ethical question. In fact, I believe, as is very generally believed in Europe, that the citizens of America have a very highly developed national consciousness, and that consequently they are to be considered representatives of a nation in the strictest sense of the word.

I would not emphasize this had I not happened some time ago to chance upon an address given by President Butler at a luncheon of the Associated Press on April 25, 1916, on "The Building of a Nation." In this address President Butler disputes the qualifications of the United States as a nation by saying:

There is not yet a nation, but the rich and fine materials out of which a true nation can be made by the architect with vision to plan, and by the builder with skill adequate to execute.

President Butler must permit me to object to these words, which were probably somewhat influ-

SELF-DETERMINATION

enced by pedagogical war motives. In his statement he perhaps did not consider the differentiations possible in the intensity of national feeling, and that measured by a European standard the United States is a national state, within whose boundaries no *Irredenta* exists. I do not mean, however, that this principle has played no rôle at all in the history and fate of the United States. The existence of the United States rests, in fact, upon the above-named subprinciple of the "nation's right of existence." The Declaration of Independence is, in my opinion, a timid, but theoretically unmistakable, manifestation of the new American state-nation, which had begun its formation in Colonial times.

This declaration speaks not yet of "nation" but of "people," and it construes the breaking loose from England as the exercise of the right of opposition based on a kind of natural law, as a forcible change of the state's form:

That whenever any form of government becomes destructive of these ends, it is the right of the People to alter or to abolish it, and to institute new government.

And yet the idea of self-determination sounds clearly in the Declaration, as an expression of the principle of nationalities in its separatistic form, in the sonorous words:

GERMANY IN TRANSITION

When in the course of human events, it becomes necessary for one People to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them. . . .

In this connection I should like to call your attention also to the preference for the word "nation" to that of "state" already evident in the *Federalist*. How different this all is in Europe and especially in Germany!

In order to give you an idea of this situation I must trouble you with a few statistics and facts. It is not without a certain hesitation and reluctance that I do this, for I fear it is not an easy matter for a citizen of America—a great, broad, thinly settled, continentally thinking country of over 100,000,000 inhabitants—to realize the degree of importance which quantitatively small and narrow problems have for Europe and the European. One must not forget, however, that the more closely individualities are compressed into an area, the more valuable every part of this area becomes. And last but not least, we must not overlook a point which is of immediate universal appeal, as Hamlet says:

Rightly to be great
Is not to stir without great argument,

SELF-DETERMINATION

But greatly to find quarrel in a straw
When honor's at the stake. . . . I see
The imminent death of twenty thousand men,
That, for a fantasy and trick of fame,
Go to their graves like beds, fight for a plot
Whereon the numbers cannot try the cause,
Which is not tomb enough and continent
To hide the slain.^x

We must notice also that the statistical material to be considered here has become a weapon in the active differences of opinion which have developed; and consequently the collection of exact data meets with great difficulties.

The multi-nationality state, Austria-Hungary, is dead, but its remains constitute in their turn, with the exception of the national state, German-Austria, new multi-nationality states and bodies strongly interspersed with minorities.

In Czecho-Slovakia, for instance, the Czechs are in the absolute majority only when the Slovakians are included. There are 46 per cent Czechs and 13 per cent Slovakians living there. The fusion of these two groups is of course quite as much a fiction as is the proclamation of the Czecho-Slovakian language as the state language of Czecho-Slovakia. By according two different

^x Act IV, scene 5

GERMANY IN TRANSITION

languages legal equality, one can as little make the same language of them as black and white can be created the same color by law. Opposite this 46 per cent plus 13 per cent stand 28 per cent Germans, 8 per cent Magyars, 3 per cent Ruthenians, and the rest Poles and Jews.

The case of Poland is similar. According to the official Polish census of September 30, 1921, among the 25,372,427 inhabitants there are 68 per cent Poles and 32 per cent foreign nationalities. These are the official statistics which are generally disputed by the minorities, however. It is supposed by them that at least 40 per cent minorities live in Poland, among whom are 1.1 million Germans and 5.7 million Russians, White Russians, Ruthenians, etc. The number of the minorities there, however, especially of the Germans, decreases steadily as a result of Poland's policy of evacuation.

The kingdom of the Serbians, Croatians, and Slovenians is built upon the idea of a Serbian-Croatian-Slovenian nation. The so-called Declaration of Corfu of July 7, 1920, refers to it specifically. In fact, however, there seems to be something out of joint in this composite nation. Before me lies a note dated February, 1922, from the sixty-three Croatian delegates of Croatia,

SELF-DETERMINATION

Slovenia, Dalmatia, and Bosnia-Herzegovina united in the Croatian *bloc*, addressed, "To All Free Civilized Peoples and Delegates of the Genoa Conference," which describes this state body as in reality a centralized great Serbian state, and which complains bitterly over the suppression of the Croatian nation. We also read lately among other items of disturbing news from Jugo-Slavia that Stephan Raditch, leader of the Croat nationalists, has been imprisoned. Besides these, this state with over 12,000,000 inhabitants, contains considerable German, Magyar, Bulgarian, Roumanian, Italian, Albanian, Turkish, and Gypsy minorities, among whom are at least 500,000 Germans. On the other hand, at least 2,000,000 of the South Slavs are living under Italian and Greecian sovereignty.

The condition of the territories of the vanquished Central Powers gives us the exact anti-type. They have been thoroughly purged of the people of foreign nationalities, and in the process a great deal was also eliminated which according to the principle of nationality should not have been taken away.

According to the carefully collected statistics of the Austrian scientist, Winkler, the following German minorities living in *compact masses directly*

GERMANY IN TRANSITION

adjoining the mother-country were brought under alien dominion without a plebiscite:

Czecho-Slovakia.....	3,123,000
France.....	1,614,000
Poland.....	587,000
Italy.....	228,000
Lithuania.....	71,000
Hungary.....	54,000
Belgium.....	50,000
Jugo-Slavia.....	50,000
Denmark.....	18,000
<hr/>	
	5,795,000

In these figures Danzig, with a population of 364,380, is not considered. Nor furthermore are the 6.4 million inhabitants of German-Austria who wish to be united with the German Empire; to say nothing of the 653,000 inhabitants of the Saar, and the 6.5 million inhabitants of the occupied territory, not including the Ruhr district.

With the exception of the small minorities of Danish nationality scattered throughout the part of North Schleswig which remained with Germany, a number of Poles in the districts bordering on Poland, and the Wendish enclave sprinkled through the Saxon Lausitz, there are now no foreign minorities to speak of in Germany. This is especially true in regard to the Protestant

SELF-DETERMINATION

Masurians in East Prussia, who feel themselves German, as has been demonstrated by the plebiscite, and by the last Reichstag elections, even though they are supposed to be by extraction a German-Polish mixed race.

I shall deal with the separatistic movement in Germany later.

I must further call attention in this respect to the many cases which came up for discussion in which a plebiscite was refused. German-Bohemia, South Tyrol, West Hungary, the ceded districts of Kaernten and Steiermark, were transferred without a plebiscite. This also applies to Eupen-Malmedy. The registration lists there can hardly be regarded as a plebiscite. It applies to Alsace-Lorraine, and above all to the Polish Corridor, to Danzig, Memel, and finally to the question of German-Austrian union.

All the latter questions, with the exception of the last, particularly affect my own home in East Prussia with approximately 2,000,000 inhabitants. The most immediate and most persistent question is the so-called Polish Corridor, that broad strip through partially mixed German-Polish, partially pure German, and partially Polish territory, which was transferred to Poland without a plebiscite, thereby transforming East Prussia into an enclave,

GERMANY IN TRANSITION

a German island floating in a Slavish sea. It is necessary to have only a very limited imagination to conceive the psychological, economic, and political results of such a settlement, which no state treaty can eliminate. One fact is worthy of attention, that the pronounced political orientation to the right in East Prussia finds one of its natural explanations in this severance.

The separation of the ancient German city of Danzig constitutes a greater technical violation of the principle of self-determination, even though Danzig was not formally incorporated in Poland. It was, however, made a Lilliputian state body under the protection of the League of Nations, and the political influence of Poland, a state body whose juridical peculiarity mocks all legal construction, and which in constant opposition to ever active Polish ambition for an increase in political and economic influence has long since become, besides the Saar problem, the chief object of the consultations of the League of Nations Council.

While here there is still a slight consideration of the idea of nationality, this idea is entirely lacking in the regulation of the Memel question. This territory, with its 141,000 inhabitants, was, according to the Treaty of Versailles, separated from Germany without a plebiscite, and is now under

SELF-DETERMINATION

Lithuanian sovereignty since Lithuania in a *coup de main à la Zeligowski* took possession of this territory, contrary to law. Subsequently after referring this question to the League of Nations, the principal Allied Powers recognized the Lithuanian sovereignty, despite, by the way, a Polish protest. That this territory, according to the principle of self-determination, would have remained with Germany is directly evident from the fact that a so-called inquiry of parents, instituted shortly before by the French force of occupation, showed that instruction to read and write Lithuanian was wished by only 400 of 22,000 pupils. This is 1.8 per cent.

The treatment of the question of German-Austrian union with the German Empire is the most striking. The German-Austrians, as well as the Sudete Germans and all Germans under the sovereignty of the border states surrounding Germany, wish to join the German Empire, and feel themselves a strongly united nation with her inhabitants.

“The Germans cannot renounce uniting the whole German nation in the confines of one Empire,” was said in a meeting of the National Assembly, February 6, 1919, by Ebert, the present President of the German Empire, then people’s

GERMANY IN TRANSITION

commissioner. Numerous manifestations bear witness to the prevalence of this will on both sides. The Austrian *Staatsgesetzblatt*, for instance, contained a clause in the law published March 12, 1919, on the form of constitution: "German-Austria is a component part of the German Empire." The execution of this clause as well as the introduction of the word "German" in the name of this new state was denied the Austrians by the Treaty of St. Germain. This Treaty contains in Article 88 a direct prohibition of the union of German-Austria with the German Empire without the permission of the Council of the League of Nations, for which decision unanimity is necessary. This finds its counterpart and completion in Article 80 of the Treaty of Versailles. By these prescriptions the active negotiations of union between the German and Austrian governments were terminated. It has become especially quiet in regard to this subject since the Allied and Associated Powers by note of September 2, 1919, extracted a protocol of September 22, 1919, ratified by the Reichstag, from the German government to the effect that Article 61, sentence ii, of the German constitution should be declared invalid, an article which provides that German-Austria *after* its union with the German Empire

SELF-DETERMINATION

should be invested with the right of participation in the Council of the Empire, according to the number of votes of its inhabitants, and until then German-Austria should have an advisory vote in the Council of the Empire.

But the desire for union is not dead. In a voluntary plebiscite held April 24, 1921, 85 per cent of the 98.8 per cent Tyrolese who voted expressed their will to unite with Germany. And on May 29, 99 per cent of the Salzburgers also voted in this sense. The will to union was given a strong expression also in the official speeches which were given March 20 and 21, 1924, on the occasion of the visit of Chancellor Marx and Foreign Minister Stresemann in Vienna.

With my reference to these statistics and facts I have at the same time begun the general characterization of the problem which occupies us. It is, briefly expressed, besides the reparation question, Europe's most complex current political problem, which constitutes a continuous explosive danger for the maintenance of peace.

The dissolution of Austria-Hungary resulted from the idea of the national state; the idea of the national state has become the greatest problem in the fate of the British Empire. The new grouping of the heritage of czaristic Russia with its

GERMANY IN TRANSITION

hundred national groups is to a great extent the result of this principle. The Flemish question in Belgium constantly assumes more actual forms. Unnumbered enmities in the world are based on this idea.

To quote the best German authority on the principle of nationalities, Professor Laun, of Hamburg:

Wherever one looks in Central and Eastern Europe one sees unsolved national enmity. Poles and Lithuanians, Poles and Ukrainians, Czechs and Magyars, Magyars and Roumanians, Magyars and South-Slavonians, South-Slavonians and Albanians, South-Slavonians and Bulgarians, Albanians and Greeks, Bulgarians and Greeks, Greeks and Turks, etc., have become involved in disputes on frontiers under the idea of the Principle of Nationality or "Self-Determination," and although the boundaries established by the peace treaties are on the whole outwardly respected today, none of the temporarily curtailed elements have the least intention of finally relinquishing their co-nationals.¹

Thus Laun writes, and the worst of it is that Laun's list is not even complete.

A part of the disputes involved are only shadows in the European sky, which the International Court in the Hague may perhaps succeed in banishing. The Aaland Island question between Sweden and Finland was decided by the

¹ Strupp, *Wörterbuch des Völkerrechts*, II (1923), 82-108.

SELF-DETERMINATION

League of Nations. The Permanent Court of International Justice has given an advisory opinion in regard to the Jaworzina question, a Polish-Czechish question of boundaries. Other questions are more difficult. The conference on the Bessarabian question held in Vienna between soviet Russia and Roumania was broken off without success, but at least the fact that a conference on this question took place is a proof that the disputing parties considered a peaceful solution a diplomatic possibility. There are questions, based on differences of nationalities in the world, however, which hardly warrant such a hope—heavy, black storm clouds in the political heavens of Europe, from which some day a bolt *must* fall. It is only uncertain when this will occur.

Ukraine is now, as you know, a part of the Russian Federated Soviet Republic, or rather, a fragment of Ukraine, for not less than 4,800,000 Ukrainians are living today in a compact settlement under Polish sovereignty. Who has any hope of a peaceful solution, especially as this is not the only question which stands between Russia and Poland? Or who believes that Lithuania as long as it exists as an independent state will forever renounce the possession of its coronation city, Vilna, which is now in the hands of the Poles,

GERMANY IN TRANSITION

as the result of General Zeligowski's *coup de main*? Nor would an incorporation of Lithuania in Russia or in a confederated Baltic state diminish the importance of this problem.

A very spiritedly written book from the pen of Hildebert Böhm has just appeared in Germany, an introduction to the present principle of nationality. This book, which has been forbidden in occupied territory, bears the title *Europa Irredenta*. This title is very significant, almost as descriptive as the Italian Minister Nitti's accusation of the Treaty of Versailles, which he called *Europa senza pace* ("Europe without peace").

Europa Irredenta, *Europa senza pace*; this is a correct picture which is at the same time a terrible gravestone for many hopes, and yet it characterizes the political situation, as it has developed, owing to the fact that it was not possible for the peace conferences to master satisfactorily the problems arising from the principle of nationalities.

* * *

But to what complex of questions are these two phrases, "principle of nationality" and "principle of self-determination," related?

This inquiry is not difficult to answer approximately; in fact, it was partially answered when I said above that the original significance of the

SELF-DETERMINATION

principle of nationality was contained in the double formula, "The whole nation a state; every nation a state."

Besides the two subprinciples there is, however, a third—the youngest one. It can be expressed by the formula, "Only the nation a state." I shall call this the "principle of the repudiation of over-nations." This third subprinciple quickly grew to be a maxim of world-political importance, and, we must add, has become a world-danger. It is the basis of those fanatic racial demands which we find on the program of the radical right parties, that the Jews shall be cast out of the community of people joined into a state, and treated as foreigners—yes, even driven out.

In this respect certain parallels with specific American problems can be drawn, namely, the Negro problem, the problem of the domestic, dependent nations—the Indians—and finally the Asiatic problem, although the original and quite un-European treatment of these questions prevents their classification under the European principle of nationality.

Besides the anti-Semitic tendency, the repudiation of the over-nation is also the basis for a great number of measures which at present agitate Europe and the world. I refer especially to the

GERMANY IN TRANSITION

methods of clearing an area of the undesired elements (1) by an attempt to extirpate them—one has to think only of the Armenian atrocities—(2) evacuation, that is, systematic expulsion, or (3) by driving out the people by vexations of various kinds. As an illustration I may refer to the muzzling of the press; the recent so-called agricultural reforms in the eastern border states which amount, in fact, to confiscation; the well-known ejection of the tenants in Poland, a case in which the International Court of the League of Nations passed an opinion against Poland; the school politics and language politics of the modern multi-nationality states; and other similar methods.

These practices, examples of which during the war found general repudiation and condemnation on the grounds of their inhumanity, have acquired tremendous proportions today. According to the material in my possession, not fewer than 150,000 inhabitants of Alsace-Lorraine have been driven from their homes; in Posen and West Prussia the number is said to be 700,000 to 800,000.

It is hardly necessary to remark that the effectiveness of such measures has not yet been proved. Flight from one's native soil does not necessarily entail forgetfulness of one's home, even though a strange race is now living there,

SELF-DETERMINATION

and many a grandchild may still turn with longing and desire in his thoughts to the house and farm of his ancestors. In other words, I regard the *Heimatliebe* ("love of native soil") as a political factor which should not be lost sight of beside the principle of nationality.

* * *

All these principles lead us back to the conception of the nation. *Qu'est-ce qu'une Nation?* (What is a Nation?) This question of the great French philosopher of religion, Ernest Renan, in his famous treatise of the same title,¹ is the one which we have to consider. It has been asked, discussed, and disputed a thousand times.

If we attempt to gain at least a rough survey in the maze of opinions, we are directly confronted by three groups of theories. First, there is the objective group, which considers certain objective characteristics of race, descent, language, a common political fate—history as it is generally termed—common culture, and finally a common form of faith, as alternative or cumulative criteria to decide the nationhood of a social group.

The antithesis of this group of theories is that which reduces everything to the subjective-psychical, and which we consequently call the "sub-

¹ See *Discours et Conférences*, 1887.

GERMANY IN TRANSITION

jective group." In this category, for instance, belongs the theory which defines a nation entirely as a phenomenon of will, to quote an expression of Redslob's.¹ Here also is the theory of Baron Eötvös when he writes:

Si l'on demande à quoi l'on peut reconnaître une individualité nationale nous répondrons: uniquement dans la conscience qu'elle puise de son existence personnelle, par le besoin de réaliser cette existence.

It must be added that the prevailing opinion supports this subjectively construed idea of a nation.

Between these two groups there is a mediating third—the combination theory—which does not restrict itself to either subjective or objective characteristics, but appropriates a part of each.

Which opinion is right? Certainly not any objective theory. Especially no theory can be right which considers a single objective characteristic as decisive. Nationality is above all things not identical with common race or descent. There are today no pure races, no great groups of persons who can claim common extraction. Nationhood is also not to be identified with common language; otherwise the English and the citizens of the United States would be one nation. Besides which, Rudolf Laun has proved

¹ *Das Problem des Völkerrechts* (Leipzig, 1917), p. 244.

SELF-DETERMINATION

that there are at least seven different uses of the term "mother-tongue."¹

The supposition that a common political destiny constitutes a nation is settled by reference to the political conditions and sentiment in the Habsburg dual monarchy. Finally the criterion of a common culture is, to my mind, despite many particular nuances, much too universal to furnish the basis for the idea of nationhood. Besides which, it contains a great deal of subjective matter. Corresponding criticism is applicable to the criterion of a common religion.

Furthermore, no combination of these different objective criteria enables us to define a nation. None of the so-called objective elements are necessary; none of them must exist. This is particularly clear in regard to language. The fact that Switzerland is a nation cannot be disputed, but the language of the country is divided into several tongues.

A short empirical consideration teaches us that a subjective element is present in every social group which we regard as a nation; that, consequently, a nation is in fact a social-psychological phenomenon. But if we inquire into the reasons

¹ *Mitteilungen der Deutschen Gesellschaft für Völkerrecht*, Heft IV, 1924.

GERMANY IN TRANSITION

for this fact we inevitably discover one or more of the objective characteristics just referred to, not necessarily any particular one, . certainly not necessarily, though very frequently, that of language. As a rule, we find several such characteristics, but occasionally only one, which is most commonly that of a common history, which, indeed, is an important factor in the existence of the other objective characteristics mentioned above, with the exception, of course, of race. For these reasons I must profess myself an adherent of the combination theory. The nation is, according to my opinion, a social-psychological unity, composed of a number of individuals, who are distinguished from other social groups by an individual and characteristic consciousness of belonging together, resting upon peculiarities of race, descent, language, political history, culture, or finally of faith.

The word "consciousness" in my definition necessitates a few words of explanation. One speaks, as a rule, in referring to the subjective element in nations, of "national feeling" (*Nationalgefühl*). Redslob speaks of "will"; Renan uses on one occasion the expression "*principe spirituel*"; Eötvös speaks of "conscience"; and in Karl Renner we find the word "consciousness" (*Bewusst-*

SELF-DETERMINATION

sein). I have also used the expression "consciousness," but in a broader sense than Renner—in the broader sense provided by philosophy intent on circumscribing the psychical as such, so as to include all psychic experience, perception, feeling, imagination, volition (intelligible and unintelligible, conscious and unconscious).

* * *

The whole problem with which I am dealing is very much confused by the lax terminology which we use. Everyone who has occupied himself with these questions knows that the terms "state," "people," and "nation" are constantly used promiscuously by science as well as in practice to the detriment of the cause. This fact is above all familiar to the professor of international law, who in fact lectures not on "law of nations," nor *droit des gens* (law of the peoples), but on "law between states" (an expression favored by Kant). It is typical of this condition that the English language uses the word "national" as a comprehensive expression for "subject" and "citizen," and attributes "nationality" to the same. The latter expression, like its German equivalent *Nationalität*, applies equally to the characteristics of the subjects of a state, to those of the members of a nation, to

GERMANY IN TRANSITION

those of a nation as a whole and to those of a national group. Let us call the parts of a nation "national groups" rather than "nationalities" while using the expression "nationality" for the sum of the characteristics of which a nation is constituted, and "nationhood" for the fact of being a nation. "National" is for us, according to the prevailing terminology, the member of a nation. "National state" is a state whose citizens belong to a single nation. "Multi-nationality state" is a state comprising several national groups.

To illustrate the confusion of the terms "state," "people," and "nation" very drastically, I would like to quote a conversation which took place during the peace negotiations at Brest-Litovsk between the chief delegates of Germany, Austria-Hungary, and Russia. The conversation ran as follows:

HERR VON KÜHLMANN (*reading from suggestions of the Central Powers*): "Both *peoples* intend to live in peace henceforth with each other."

TROTZKI: Both *states*.

VON KÜHLMANN: Both *nations*.

TROTZKI: Here stands "both *treaty-making powers*."

VON KÜHLMANN: The *nations* intend, consequently I am surprised that you make so much opposition.

TROTZKI: Bad translation.

SELF-DETERMINATION

VON KÜHLMANN: Yes, but we are not responsible for the translation. Is the term "both nations" acceptable?

TROTZKI: "Both peoples" would be more so.

CZERNIN: "Both peoples" is impossible, for the reason that a great many peoples live in Austria-Hungary all of whom hope to live in peace with Russia.

VON KÜHLMANN: This applies to Germany and Russia, as the treaties are separately concluded and only then put together.

CZERNIN: It might therefore be better if we came to an agreement at once, and selected a correct corresponding form, which would also apply to us, where the term "both peoples" could not be accepted. Here in my draft stands "both contracting parties of the treaty."

VON KÜHLMANN: Our draft for the German-Russian relations says: "both nations."

CZERNIN: I also would not object to saying: "the contracting parties of the treaty."

It is utterly misleading to identify the people with the state, even in the purest form of democracy, in which not only according to the text of the constitution but in reality, all executive authority is derived from the people, and the people is sovereign. For even here it is not in the end the people as such which is the state, but the settled, residing, organized people as a social-psychological unity. It remains true that the people constitute the personal substratum of the state and one of its necessary elements, but the people are not the

GERMANY IN TRANSITION

state. Be that as it may, it can be said that the terms "nation" and "people" are equally applicable to groups of men, but groups of men considered under different points of view; "people" in the usage of political science is the sum of the citizens or subjects. In this "people," individuals of the most heterogeneous national consciousness may be included.

This confusion between people, nation, and state is, I believe, the reason for the fact that one often speaks of "self-determination of peoples," sometimes of the "self-determination of the populations," in certain places even of "self-determination of states," and to crown the disorder, the "self-determination of races." The only correct term here is "self-determination of *nations*," or eventually of "national groups." For the term "self-determination of peoples" leads back inevitably to the erroneous subjective conception of the nation as a community based upon pure sentiment. We demand more with the term "self-determination of nations." It does not satisfy us that a number of men should acquire the right to change their political destiny by merely declaring their will to the effect that they wish to separate from the state to which they at that time belong. We maintain that those men must already constitute a nation

SELF-DETERMINATION

or a national group within the state in order to acquire this right.

What I have said also provides the foundation for the elucidation of the relation of both expressions "principle of nationality" and "right of self-determination of nations." They are not antithetic, but rather move in the same direction. The principle of self-determination of nations is a comprehensive expression for the modern development of the principle of nationality.

Before explaining this, we must become somewhat more familiar with the idea of the principle of nationality, however.

If we attempt to relegate this principle to its place in the scientific system, we discover that it belongs in the thus far rather unsatisfactorily investigated doctrine of the social-psychological reasons for the development of the state.

The principle of nationality is a dynamic principle forming history and fate in the life of states. Seen from inside the state, it is primarily to be regarded as a consolidating factor for the cohesion of the citizens in the state unit in so far and because these citizens represent a solid national group, or even a whole nation. But the principle of nationality may, secondly, be decentralizing if a number of heterogeneous national

GERMANY IN TRANSITION

groups exist within the population of a state. The principle of nationality has, thirdly, an expansive influence, if the nations, or the national groups united in a state, are not saturated in regard to their stock of population, and if they strive for the inclusion of national groups of similar being and kind as members in their state. Its effect is, lastly, separatistic in so far as these national groups contain populations of different kinds.

Each of the three last-named tendencies—decentralization, expansion, or separation—inevitably presents many points of contact and conflict between states. This is especially the case with the expansionistic tendency, a tendency in which we recognize our “principle of the repudiation of under-nations” without difficulty. For here the union of state, people, and nation must be brought about at the expense of another state, namely, the one which counts the *Irredenta* among its subjects.

Consequently, the principle of nationality, especially in its expansive tendency, is chiefly a political-dynamic principle which influences the growth and diminution of some states at the cost of others. It is therefore an apple of discord, and has great significance for the comprehension of the real reasons for wars.

SELF-DETERMINATION

In the list of the various social-psychological state-developing principles nationality belongs in the category of the immaterial impulses in contrast to the material impulses such as the economic impulses: the urge toward better pastures; the desire for saltpeter, coal, and iron; the great fate-forming impulse to the open sea, the eternal *thalatta* of mankind; and other like instincts. The principle of nationality stands in the same category with princes' lust of honor and sovereignty, with churches' and sects' impulse to conversion (we only have to remember the Crusades), with fear of bad neighbors which produces the striving for strategic boundaries and recently for neutralized zones, and finally the principle of nationality stands on the same level with the form of purely brutal life-impulse which seethes in the veins of the ambitious younger peoples, and is one of the chief impulses of modern imperialism.

The principle of nationality is therefore one of the many principles dealing with the social-psychological development of states. It is the youngest and most often named, but not in all respects the most triumphant of these principles.

It is generally claimed in regard to its age that it sprang from the world of thought of the great

GERMANY IN TRANSITION

French Revolution. This is not quite correct. The consciousness of nationality has existed and exercised an influence as a factor in history as long as there have been states. This is above all true of the separatistic tendencies contained in this principle.

In this connection I should like to refer to a little-known pamphlet by Finke on *Weltimperialismus und Nationale Regungen im späten Mittelalter* (*World-Imperialism and National Tendencies in the Late Middle Ages*), which states that the occidental world has the ancient Germans to thank for its national structures, which further calls our attention to the fact that the great German historian Ranke sees in the enthusiasm over the battle of Bouvines (1124) "the first life-movement of a common consciousness of the French nation";¹ that Macaulay dates the history of the English nation from the Magna Charta (1215); and that P. J. Block, in a treatise on *Holland und das Reich vor der Burgunder Zeit* (1908), says, on page 629: "Towards 1300 the germs of Dutch nationality can be distinctly felt."²

The importance of the ideas of the great French Revolution for the principle of nationality appears to me to lie chiefly in the fact that it constitutes a

¹ Italics are mine.

SELF-DETERMINATION

milestone and turning-point in its intensity and dynamic significance, especially in that of its expansive tendency. It is often said that the French Revolution discovered the individual and his rights, or, more correctly, completed the already prepared discovery, for Europe, and revealed all its consequences. But it not only conceived the individual in all his peculiarities; the French Revolution at the same time became the starting-point of a constantly increasing collectivism, because it composed and intensified the individuality and the right of existence of certain collective groups as social individualities. This is especially the case in regard to the nation and its soul—the national consciousness.

Thus, only after the French people felt and conceived themselves as a national collective unity, was it possible for French politics to develop in the direction of that purposeful national expansionism which characterizes the foreign policy of the French Revolution and its heir Napoleon, only indeed to become soon pure imperialistic expansionism.

This is one thing which must be said of the world-historic importance of the French Revolution for the principle of nationality. But a second observation has to be added here which impresses

GERMANY IN TRANSITION

me as still more important: The French Revolution consummates the connection of the principle of nationality with the democratic idea, and becomes thereby the mother of the modern democratic principle of nationality.

A long time still elapsed, indeed, before this thought of the connection of the principle of nationality with the idea of democracy was expressed in forms of speech. This took place only when, through the Russian revolutionaries, the formerly only occasionally used expression "self-determination" of peoples, and so forth, quickly became generally adopted.

The form of plebiscite as a manifestation of the principle of nationality has remained dominant. It was applied in the union of Italy; Napoleon III used it; the Russians in Brest-Litovsk also emphatically demanded its use with long, theoretical arguments. But it must be emphasized that it did not remain the only form in use in the nineteenth and twentieth centuries. I shall only refer to the union of the German states in a German national-state in 1870 and 1871. In none of the new states which emerged from the war have plebiscites of the people concerned really taken place—as to whether or not they really wished to form a state—and yet they have all adopted the

SELF-DETERMINATION

principle of self-determination as the reason and justification of their existence.

It is known that in the above-mentioned peace negotiations of Brest-Litovsk a theoretical duel of words took place for days, especially between Herrn von Kuhlmann, on the one side, and Joffe (later replaced by Trotzki), on the other—a strange and singular proceeding which recalls disputations in the Middle Ages.

The Russians had a very clearly conceived idea that self-determination is a democratic principle. The first of Joffe's announcements in the opening session December 22, 1917, contains the following words: "The Russian delegation have the clearly expressed will of the people of Revolutionary Russia as their premise to attain the conclusion of a democratic peace as soon as possible." He refers then to the Peace Decree of the All-Russian Congress of Workmen's and Soldiers' Deputations, which was confirmed by the All-Russian Congress, and which began with the idea that, by a just, democratic peace, a peace without annexations is understood. On this occasion the following definition, which interests us greatly in this connection, was given for the idea of annexation, a definition which also proves in how broad a fashion the Russians had conceived the problem of the

GERMANY IN TRANSITION

principle of nationality. This definition reads as follows:

According to the legal consciousness of Democracy in general and the working classes in particular, the government understands by annexation and the occupation of foreign lands by force every incorporation of a small or weak nation into a larger or stronger nation, *unless the consent and the wish of this nation has been given a distinct, clear expression of its free will in this direction.*^x

The Central Powers at Brest-Litovsk supported the standpoint that lacking other representative bodies, the existing and historic representative bodies presumptively represented the expression of the people's will, but the Russian delegates insisted that proof of whether an organ expresses the will of the people could be had only by a general questioning of the whole national group, which is thus called upon to exercise its right of self-determination by vote. This questioning bears the technical term "plebiscite."

Consequently, there are today three theoretical forms of application of the principle of nationality and right of self-determination: first, the plebiscite; secondly, the spontaneous unorganized expression of the will of a national group; and thirdly, the expression of the will of such a group

^x Italics mine.

SELF-DETERMINATION

by the medium of the historic organs of their will, especially their parliaments.

It is hardly necessary to say that the plebiscite is the only form which the prevalent opinion of our time considers qualified to guarantee the adequate expression of a nation's will, under the condition, of course, that most explicit guaranties for a just and uninfluenced practice of the same are provided. The latter is a demand which has proved to be essentially imperative, since the experiences of plebiscite in the execution of the treaties of peace.

While the three above-named forms are not the only ones in which the principle of nationality may exercise itself, they are, however, the only forms in which it manifests itself on the question of state succession, and consequently, in my opinion, the only forms in which the right of self-determination of nations can manifest itself. In other words, the right of self-determination is the application of the principle of nationalities to cases of state succession.

* * *

The so-called right of self-determination is today an impulse for the development of states. Regarded from the normative side, it is not law or a right in the legal sense but a political rule of

GERMANY IN TRANSITION

conduct similar to the principle of legitimacy, the principle of balance of powers, the principle of the open door, the principle of free trade and the Monroe Doctrine—as long as the latter was not legally recognized, and made thereby the premise for a subjective right of the United States in the legal sense of the word—which in the system of international law is to be classified approximately with the so-called spheres of influence and the *Hinterland*.

But is this all? Is the principle of self-determination of nations no more? Is it not also an ethical principle? Then only would it become sanctified as a political principle. For we acknowledge the claim which Immanuel Kant formulated in his treatise on *Eternal Peace* in the sentence: “True politics cannot take any step without having first done homage to morals.”

I can be brief here, for the question of whether the principle of self-determination of nations is intrinsically ethical is a matter, not of perception and evidence, but of belief. Consequently, we must confine ourselves to the question whether we believe in the principle of self-determination in this sense, and I must limit myself to saying that I believe in the ethical justification of this principle as a developing factor of states as long as

SELF-DETERMINATION

and because the nations exist as social beings, because mankind acknowledges them, tries to group itself according to them, and conceives its political happiness in national union.

Another thing must be added: This natural claim of nations to political existence requires the most painstaking legal regulations and limitations. So long as the anarchy existing today in this respect continues, this principle in fact contains political dynamite, which can only arouse desire without satisfying it, as Secretary of State Lansing wrote.

Above all, a national consciousness, which may be as highly developed as you will, does not provide a claim to existence as a state nation, in my opinion, unless the group in question is actually large enough to constitute a really efficient state. Otherwise the national group in question must be satisfied to form a state people together with other national groups. The idea of federalism and, as a makeshift, also the principle of the protection of minorities seem adapted to mitigate and to do away, at least to a certain degree, with the resulting severities.

To my great regret it is impossible for me to expand the details with which this problem is particularly interspersed.

GERMANY IN TRANSITION

Its essence is fundamentally, however, like all the great international problems of today, less legal than of a social-pedagogical nature. It would be futile to attempt to order this chaos by legal norms only, as long as we do not find other opinions and convictions pre-existing, as long as quite new conceptions of the relations of states to one another, the duties of the state, and the relation of the individual in and toward the state have not entered the heads of mankind, especially those of the leading statesmen. And these must be ideas which are based on the acknowledgment of the sovereignty of ethics in the life of states, a sovereignty of the same strength and absoluteness as in the life of the individual. Ideas similar to those preached by men like Bossuet, Fénelon, Friedrich the Great in his *Anti-Machiavell*, George Washington, Kant, and Francis Lieber in his *Manual of Political Ethics*, must become universal. Here are the greatest preparatory problems for science, especially for that almost forgotten branch of political science—state-ethics.

My lecture on the League of Nations concluded with an appeal to and a confession of law and the hope of the diffusion of law throughout the whole world. But law is fundamentally nothing more than an ethical minimum (Jellinek), and I believe

SELF-DETERMINATION

that I cannot end this discussion better than by concluding it with the words with which Washington began his *Farewell Address*:

Observe good faith and justice toward all nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct; and can it be that good policy does not equally enjoin it?—It will be worthy of a free, enlightened, and in no distant period, a great nation, to give to mankind the magnanimous and too novel example of a People always guided by an exalted justice and benevolence.

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THE NEW GERMAN CONSTITUTION

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THE NEW GERMAN CONSTITUTION

As Clemenceau gave his speech of introduction before the Treaty of Versailles was signed, and used therein the expression *Empire Allemande* (German Empire), he was interrupted from several sides by exclamations of “*Reich!*” “*Reich!*” This noteworthy incident was the first apparent attempt to decline the expression “empire” for the German state body in its international relations, and substitute the German expression *Reich*.

This attempt seems unwarranted, and the argument advanced that the term “empire” is synonymous with “monarchy” with an emperor (Kaiser) at its head is untenable, since the German Empire before the Revolution was in fact, as we shall see later, an oligarchical republic, and the Germans themselves make a distinction between *Kaisertreich* and *Reich*. The repeated efforts to introduce this term *Reich* for the new German state have fortunately suffered shipwreck, and the expression “empire” is being used increasingly in international relations in reference to the new German state.

GERMANY IN TRANSITION

In another case a German expression must be retained, however: there is a tendency still to call the former member-states of the German Empire "states." This is not constitutionally permissible, as the new German constitution uses the word *Land* in distinction from the word *Staat* ("state"). The use of the word "state" in connection with these bodies is the less permissible as it would denote taking sides in a deeply rooted controversy on the constitutional nature of these bodies. As there is no term for *Land* in any other language, we must apply this German word in international terminology. This would not be without precedent, as, to cite one of many instances, the German word *Hinterland* is commonly used in international law. We are the more justified in doing this as the constitutional form signified by the word *Land* is not peculiar to Germany, but is found elsewhere, as scholars like Redslob and Georg Jellinek have demonstrated.

Consequently, in presenting some observations on the spirit of the new German constitution here, I speak of the constitution of the new German Empire, while in my next discussion on "Separatism in Germany," which is intended as a continuation of this subject, I shall deal with certain vital questions between the German Empire and the "Lands."

THE NEW GERMAN CONSTITUTION

The constitution of a nation is its apparel, its mantle. It is, or ought to be, its shield and backbone, and the expression of its soul.

It is no festive garment, no royal robe, which the German people wrapped around their mutilated body with the constitution of August 11, 1919. On the contrary, one sees a rather patched covering, the cut of which was to a great extent dictated by outside factors.

When I call this constitution rather patched I do not mean thereby that it is an expression of an imitative tendency which the Germans are rightly or wrongly often said to possess. As far as the new German constitution is concerned, it is almost completely independent of concrete foreign examples. Not that it does not contain thoughts which are also to be found in other constitutions of our era. But these features, which one remarks here and there, are generally common ones, not borrowed, and are rather a double proof of the similar fundamental ideas of our day than the expression of a relation of original and copy. This, for instance, applies to the fact that Germany is a parliamentary republic based to a certain extent on the principle of the separation of powers, that she has a president as her head, and that in the new constitution a list of fundamental rights fills the entire second part.

GERMANY IN TRANSITION

There is, by the way, one completely original line in the German constitution. I do not mean the exposition of the *Vorläufigen Reichswirtschaftsrat* (Temporary Imperial Economic Council), a new body with parliamentary features, which possesses advisory functions relating to social and economic legislation, and in which all the social forces of Germany are supposed to be represented. I refer rather to the fashion in which the principle of self-determination is included in this constitution. Article 18 limits the right to incorporate new areas in the German Empire by the condition that the inhabitants of the territory in question indicate their wish to be united with the German Empire by a referendum. I would further call your attention to the prescription for the protection of minorities in Article 113, which provides, without any international obligation, that those elements of the population within the Empire which speak a foreign language may not be interfered with by legislative or administrative action in their free and characteristic development, especially in the use of their mother-tongue in the schools, or in matters of internal administration, and the administration of justice.

Of course I would not maintain that the writers of our new constitution had no foreign examples

THE NEW GERMAN CONSTITUTION

in their minds, nor that, in so far as time and the literary sources at their disposal permitted, they did not investigate these foreign examples carefully to ascertain their suitability. In fact, they applied this examination especially to the constitutions of the United States and France. But in the end, as a result of comparison, study, and doubt, a more or less original third constitution emerged which reminds one here and there of the examples but does not echo them.

When I say that the German constitution is almost completely uninfluenced directly by foreign examples, I refer to the relations between this constitution and non-German constitutions, as those between the German constitution of 1871 and the Japanese constitution, between the Belgian and the Prussian constitution of 1850, and between the Danzig or Polish constitutions and our new German constitution.

By the repudiation of foreign examples I also do not claim that the constitution of 1919 was quite independent of example. Nothing would be further from the truth, for this constitution adhered closely to two prototypes, but these prototypes were of German origin. I refer to the old German constitution of 1871 as one, and the draft of a constitution framed in the Paul's Church in Frankfurt in 1849.

GERMANY IN TRANSITION

If one compares the constitutions of 1871 and 1919, there are fundamental constructive, categorical differences, besides a marked alteration in the distribution of the competences and authority of the highest executive organs of the Empire.

The divergence between the old and new constitutions is characterized among other features, for instance, by the quantitative difference in relation to the authority and competence of the Reichstag. The old Reichstag together with the *Bundesrat* (the Council of the Federation) were the legislative organs of the German Empire, while today the Reichstag alone is invested with this power. The participation of the *Reichsrat* (Council of the Empire) and the other highest organs of the Empire in framing legislation is today only of a preparatory and corrective auxiliary character. The competency to dismiss ministers by a vote of want of confidence has given the Reichstag even a very important new function compared to the old German constitution.

The alteration in the relations between the Empire and the German "Lands," which were formerly called *Gliedstaaten* (member-states), consists chiefly in a combination of very largely increased competencies, and the creation of new competencies for the benefit of the Empire. But the diver-

THE NEW GERMAN CONSTITUTION

gencies between yesterday and today in this respect are so tremendous that they must at the same time be regarded as qualitative.

The constructive differences between the old and new constitutions are especially apparent in the position of the head of the German Empire. According to the general opinion, to quote a definition of Prince Bismarck's, *die Gesamtheit der verbundeten Regierungen* ("the body of the federated governments") represented in the Council of the Federation were sovereign in the old Empire.

In this Council of the Federation, therefore, we find the representatives of all the governments of the German Empire, which, according to the prevailing constitutional theory, was an oligarchical republic, not a monarchy as is generally believed in lay-circles. The Kaiser was *not* the monarchical head of this state-body. The term "Kaiser" was no more than a title for the king of Prussia in his function as occupant of the presidency of the federated state termed "German Empire." Article 11 of the old constitution provides verbally that the president of the federation is the king of Prussia, who bears the title German Emperor. And in the preamble of the old constitution we read:

His Majesty, the King of Prussia, in the name of the North German Federation. His Majesty, the King of

GERMANY IN TRANSITION

Bavaria, and so forth, form a permanent Federation. This Federation will bear the name "German Empire."

Thus the letter and law of the old constitution. It must be added, however, that during the half-century in which it was in force, the development taken by the constitution in this as in other respects was apparently toward unity and toward "Empire," in the most limited sense of the word.

In the new constitution this is all fundamentally different, and far more simple from a constructive standpoint. A president directly elected by and representing the sovereign people is at the head of the Empire. And, as exponent of the federalistic idea, the *Reichsrat* (Council of the Empire) has succeeded the *Bundesrat* (Council of the Federation) as the highest executive organ.

The fundamental difference between these two constitutions can be explained by the following antithesis. On the one hand, a constitutional, oligarchical republic with certain tendencies toward monarchy; on the other, a parliamentary, republican, representative democracy—the sharpest contrast.

This contrast does not indeed suggest a relation of original and copy. And yet the assertion that the constitution of 1871 was to a great extent the pattern for the constitution of the German Repub-

THE NEW GERMAN CONSTITUTION

lic of today is quite correct. It is especially noteworthy that the fathers of the Weimar constitution exerted themselves to a large degree to preserve a formal connection between the old and the new constitutions. Two laws demonstrate this better than long explanations, namely, the so-called *Uebergangsgesetz* (Transitory Law) of March 4, 1919, which created the *Deutsche National Versammlung* (German National Assembly) for the period of the constitutional deliberations at Weimar, and Article 179 of the new constitution. These laws, together with the old constitution, form a threefold chain of legal continuities in the organizational construction of the Empire. The lines run from the old Reichstag through the Weimar National Assembly to the Reichstag of today; from the Kaiser through the *Rat der Volksbeauftragten* (Council of People's Commissioners) and the temporary President of the Empire to the permanent President of the Empire; and from the *Staatenausschuss* (Council of the Federation over the State Committee) to the Council of the Empire.

And now that second prototype. The draft constitution of 1849 marks one of the stages of the German people's development, a glimpse of the promised land, a hope which was disappointed

GERMANY IN TRANSITION

on the eve of fulfilment because the time was not yet ripe as the German-Austrian struggle for supremacy in Germany had not yet been decided on the battlefields of Königgrätz, because the fate of Germany was not at that period in the hands of a Bismarck, and no Wilhelm I was on the Hohenzollern throne, but a Friedrich Wilhelm IV, who refused to accept the election as *Volkskaiser* (people's emperor) which had fallen to him at the Assembly in the Paul's Church. Consequently, the constitution proclaimed on March 28, 1849, and the Election Law of the Empire, as well as the *Grundrechts* (Fundamental Rights) published before, never became German law. Their influence, however, was a vital one, and seventy years later they experienced a partial resurrection in the Weimar constitution of the Empire in 1919.

The Fundamental Rights of which I speak are thus discussed in the best German book on the Convention in the Paul's Church:

The German National Assembly struggled most fiercely over the Fundamental Rights and its Election Laws. One can say that the Fundamental Rights were written with sweat, blood, and tears. We can compare these paragraphs with the stations of a martyr's path which the German people had to climb with difficulty. In the discussion of every single paragraph by the assembly, the cases from the time of the

THE NEW GERMAN CONSTITUTION

reaction, which rendered such regulations necessary, were cited; those disgraceful cases of the curtailment of personal liberty, of the suppression of independent opinion, and of religious and economic conviction. In these Fundamental Rights are contained the breath of liberty from the time of the Reformation, from the time of Puritanism, and the great French Revolution, that deep belief in the dignity, the equality and the right of self-determination in humanity as such.¹

Thus Veit Valentin. There is, in fact, something moving in this catalogue of confused wishes, fears, and hopes. Much of it has been absorbed by the present conscience as something to be taken for granted. It is a document from which one can construe the constitutional mentality and political ideology of the Germans better than from the works of a Heinrich von Treitschke or General von Bernhardi, or even a Hegel—not to mention Friedrich Nietzsche.

A great part of these Fundamental Rights was included literally in the Weimar constitution. The Frankfurt constitution, of course, lacked the social features, those fragments from the Socialists, Erfurter Program, and similar emanations, not to mention the Economic Council idea—a combination of soviet Russian and German thoughts.

¹ Valentin, *Die erste deutsche Nationalversammlung* (München, Berlin, 1919), p. 152.

GERMANY IN TRANSITION

The social state was only in the process of being discovered in 1848.

Besides these Fundamental Rights, many other features, chiefly from the regulations for organization, have been taken over from the Frankfurt constitution. These are features the discussion of which would go too far here, but I should at least like to remind you that the flag of the Empire with its black, red, and gold colors, which is the cause of so much dissension in Germany today, was also to be the flag of the Paul's Church empire.

In describing the Weimar constitution as rather patched, I was not alluding to these two prototypes, however, for these are German examples, and the connection with them seems to me rather a proof of the genuineness of the Weimar constitution, and an indication that it is German in its spirit—a revelation ripened in the course of the history of the German people's soul. By the expression “patched,” I would rather call attention to the fact that this constitution, as the product of a strongly divergent parliamentary coalition majority, is to a great extent a political party compromise.

Successful as the constitution of 1919 is from the standpoint of the legal scholar in its close

THE NEW GERMAN CONSTITUTION

structure and the legal precision of its first part, from a political point of view it appears in certain parts very disconnected and imperfect. Only too often its regulations, balanced between yes and no, have stuck in the middle, and indicate a compromise between right and left.

A number of prescriptions dealing with the Fundamental Rights serve as an especially good example. In these Fundamental Rights a decided lack of resolution, consistency, and the willingness to assume responsibility is evident. The regulations are filled with limitations and conditions. They are in part so carefully formulated that disagreement exists as to whether they embody actual law, or are merely directions for the legislator, good intentions, promises, or consolations. The hard verdict that this catalogue of Fundamental Rights is at the bottom little more than an interfactional party program has not been uttered without a certain justification.

In studying the new constitution one sometimes has the impression that its authors were frightened by their own courage in this or that question. The rules for the initiative and referendum, for instance, are surrounded by so many clauses that they have almost lost their political usefulness. And, in fact, in spite of recurring

GERMANY IN TRANSITION

agitation, there has been no use made of these provisions in the Empire, though in a number of German "Lands" a *Volksabstimmung* has taken place.

A lack of united purpose and self-reliance can also be seen in the fact that the constitution has avoided an exact circumscription of the competencies with which the highest organs of the state are invested. One would seek in vain to ascertain from the contents of the constitution what degree of political influence the Council of the Empire, the President, the Temporary Imperial Economic Council, or even the Chancellor of the Empire are expected to exert in the structure of the governmental machine. The constitution has left this to future development. Only in one point is its purpose quite clear. We are struck by the apprehension that the influence and position of the Reichstag as heart and central organ of the constitutional machine might not be sufficiently guaranteed. Consequently, the position of the Reichstag is established in the constitution with the greatest emphasis and care.

There is also another respect in which the constitution is explicit, and manifests no uncertainty or deviation. I refer to the new form of government in the Empire. The new Empire is a

THE NEW GERMAN CONSTITUTION

democracy. This idea is literally hammered into the constitution, without compromise, and with an effectiveness hardly to be exceeded or even equaled in any constitution. "The German people has given itself this constitution" are the words with which it begins, and its conclusion is in the same tenor. Article 1, Part 2 (the first part of this article proclaims the Republic), states: "The political authority is derived from the people." Every "Land" must have a republican constitution. The representatives of the people must be elected by universal, equal, direct, and secret suffrage of all German citizens, both men and women, according to the principle of proportional representation. The government shall require the confidence of the people. In Articles 20 and 22 we read: "The Reichstag is composed of the delegates of the German people." "The delegates are representatives of the whole people." In Article 54 it is stated: "The Imperial Chancellor and the Imperial Ministers require for the administration of their offices the confidence of the Reichstag." Thus the constitution finds in one paramount principle its firmly established premise.

My statement that the cut of the constitution was dictated by outside factors did not refer to the psychological pressure which President

GERMANY IN TRANSITION

Wilson exerted toward the abolition of the monarchy and the realization of the democratic idea in Germany. This already occupied many minds in Germany. Great as was the suggestive effect of this peace propaganda, I was alluding more to the far greater influence of the Treaty of Versailles on the German constitution and German constitutional life. By the terms of Article 178 of the constitution, as well as by publication in the *Reichsgesetzblatt* (the official journal for the publication of German laws), the Treaty of Versailles has become a kind of annex to the constitution, an annex which, however, does not share the especial guaranties provided for constitutional prescriptions. Among the numerous consequences resulting from the legal situation produced thereby, one fact interests us especially, namely, that now institutions like the Council of the League of Nations, the Conference of Ambassadors, formerly the Supreme Council, which are often confused with each other, the Reparation Commission, the International Courts, and the other organs which are occupied with international administrative and judicial functions under the Treaty of Versailles, are actually forced into the German official organization, without, however, fitting in organically. To name all

THE NEW GERMAN CONSTITUTION

the international organs or their individual functions which come under this category would be futile, owing to the extent of the material to be considered. But I would call your attention to the significant fact that the Reparation Commission is more influential and powerful in the prerogatives with which it is invested than any German constitutional organ, apart from the fact that it has a quite different authority behind it from that which the weakened German state can guarantee its inner political organs.

Article 244, paragraph 11, Annex 2 of the Treaty of Versailles says of the Reparation Commission:

The Commission shall not be bound by any particular code or rules of law or by any particular rules of evidence or of procedure, but shall be guided by justice, equity, and good faith.

The even more radical paragraph 14 states:

Decisions of the Commission, in accordance with the powers conferred upon it, shall forthwith become binding and may be put into immediate execution without further proceedings.

Now, according to the Dawes plan, a fateful increase in the number of such institutions faces Germany.

GERMANY IN TRANSITION

It is no wonder that under such circumstances in Germany the question of whether Germany is still sovereign has been raised and denied. And this takes place not only in political discussion, which is inclined to a lax verbal habit, but even in German science grave doubts have developed in this respect. These doubts cannot be satisfied by the cautious formulation of the *Belastung der deutschen Souveränität* ("weight on German sovereignty") by Dr. Simons, the former minister of foreign affairs, now president of the *Reichsgericht* (Supreme Court). They are based primarily on the fact of the authority exercised by the numerous international commissions in Germany just mentioned. According to the prevailing conception of the term "sovereignty" this is incorrect, I believe, for all these institutions are theoretically based upon a German expression of will, on Germany's signature and ratification of the Versailles Treaty, and the publication of the Treaty as a law of the Empire.

According to the view I hold on the theory of sovereignty, however, the fact that limitations of power are derived from self-obligation does not necessarily prevent their infringing on sovereignty. I consider that sovereignty is actually infringed

THE NEW GERMAN CONSTITUTION

upon even by self-obligations when they furnish the foundation and premise for the exercise of foreign prerogatives and authority within the state. Foreign authority, on one side, and sovereignty on the other are in my opinion incompatible, for they entail a relationship of superiority and inferiority which contradicts the natural conception of sovereignty. If Germany can still be characterized as sovereign today it is only for the reason that the obligations of the Treaty of Versailles are limited in duration. Consequently it is, in my opinion, correct to say that sovereignty is suspended in Germany, exactly as it is, for instance, in the occupied territories.

What I have just said provides a far from promising premise for discussion of the two questions: (1) whether and in what degree the German constitution is really a protection and shield for the Germans and their Empire, and (2) in what degree it can be regarded as the expression of the German people's soul.

If we are just, however, we must see a gratifying proof of the German people's will for constitutional order in the fact that a constitution was framed at all in August, 1919, and turned out as it did with its hurried birth, under the pressure of what

GERMANY IN TRANSITION

had happened, the collapse, the two revolutions following, the uncertain future, and last but not least the lack of experience.

In turning to the consideration of the two questions defined above, I must be careful in answering them, for so far the new German constitution has hardly had an opportunity to work itself out, and represent what it really is in the calm course of events. Revolts, political murder, violence, unexpected situations in foreign politics, "sanctions," and similar incidents in quick succession have constantly created new, exceptional situations, which have rendered exceptional measures of defense necessary. Article 48 of the new constitution, which provides for the so-called *Ausnahm-zu-stand*, supplies the chief constitutional background for such exceptional measures. Unfortunately, lack of space prevents my dealing with this interesting question as I at first intended to do.

When one looks back on the thorny path which the German people have trod during the last years, one must acknowledge that the new German constitution has manifested on the whole a comparatively great strength. Naturally it has not survived these storms unaltered. We can already point out several changes, although not

THE NEW GERMAN CONSTITUTION

fundamental in character, which are partly of customary, partly of written, law.

I cannot let this opportunity pass without a short reference to the general weakening of the conception of state in Germany as a result of the disillusionment, and the decrease in the authority of the Empire. This condition manifests itself in other countries also, and is probably to be chiefly explained as a general post-war and revolutionary phenomenon. Every *Devisen-Kommissar* (commissioner for foreign currency), every official against profiteering, and every revenue officer could tell a tale in this respect. This is not at all surprising in Germany, where the best classes have been impoverished, and, as they claim, not without telling arguments, partially through the fault of the state, in which they believed, to whom they gave their gold, and from whom they bought their *Kriegsanleihe* (war bonds), but which did not repay their confidence. I shall cite only the fact that the so-called Third *Steuernotverordnung* (Emergency Tax Law) of February 14, 1924, provides among other things that only 15 per cent of their nominal value in gold marks can be claimed from mortgages, bonds, and life insurance policies, and that the payment of the sums in question cannot be demanded before 1932. In the case of savings

GERMANY IN TRANSITION

banks the total deposits are simply to be divided among the depositors. The interest and redemption of Empire and state loans, which were outstanding before the Third Emergency Tax Law was put into effect, according to paragraph 16 of this law, cannot be claimed before the settlement of all obligations of the reparations. This affects the owners of German war bonds in particular.

These measures, which constitute a severe encroachment on the substance of the German people's property, are in no way materially different from the measures attending an interior state's bankruptcy. Is it a wonder that even a crisis of the state idea has been discussed in Germany and this chiefly in reference to certain particularly vigorous manifestations of the conditions just mentioned? Besides minor symptoms of a decrease in the law-abiding will, certain violent bursts of activity on the part of the workers' unions, on the one hand, and of industry, on the other, independently of the state, and even against the state, also come into consideration here.

Before the breaking-off of the general strike, which was begun on March 18, 1920, to defeat the Kapp-Revolt of March 13, the unions presented the government with eight conditions in the form of an ultimatum, which exercised a very decisive

THE NEW GERMAN CONSTITUTION

influence on politics, and which the government was obliged to accept at that time, but from which we are today quite far removed again.¹ The unions repeated their methods in a very pronounced form with the ten conditions of the Board of Directors of the *Deutsche Gewerkschaftsbund* of February 26, 1921, to combat unemployment.²

Of the greatest interest is the communication of May 25, 1923, addressed to Chancellor Cuno by the President of the *Reichsverband der deutschen Industrie* (Imperial Association of German Industry), in which the powers of industry professed their willingness to carry 40 per cent of the then contemplated 500,000,000 gold marks yearly additional guaranty of the reparation burden upon the whole German economic system. They, however, made a number of conditions, among others: maintenance of the tax sovereignty, the exploitation of the objects of value in the possession of the Empire and "Lands" according to scientific principles, equality of German productions in foreign countries, the government's abstinence on principle from the manufacture and distribution of goods,

¹ See *Korrespondenz-Blatt des Allgemeinen Deutschen Gewerkschaftsbunden*, XXX (1920), 153.

² See *Korrespondenzblatt des Deutschen Gewerkschaftsbunden*, XXXI (1921), 132.

GERMANY IN TRANSITION

the creation of a lucid taxation system calculated to incite economy, and so forth.

This action was noticed with the following words by the trade unions in a communication of June 1, 1923, addressed to the President:

The inner political conditions appear to us completely to reverse the relation of industry to the state. Industry attempts to deal with the state as an independent power, and makes stipulations where the case in question is one of fulfilling the duty of citizens towards the state. The attitude of industry suggests the conclusion that it intends to regulate the entire problem of reparations between industry and industry over the head of the state, and the authority of the state would be unbearably weakened if the government of the Empire should accept the conditions of the Imperial Association.

Dombrowski writes very justly in the *Berliner Tageblatt* of May 29, 1923, in reference to the Imperial Association note: "The tone is displeasing. In former times the Kurfürsts spoke thus, and the dukes spoke thus to the Emperor, after they had seceded territorially." This comparison with the Middle Ages is, in fact, one which presents itself here, a parallel of which one is also reminded when one hears, for instance, of the Stinnes-Lubersac Treaty, the Micum treaties, and similar manifestations. But, if I am not mistaken, one might be able to find some parallels to these facts in the United States of America.

THE NEW GERMAN CONSTITUTION

Such conditions must necessarily reflect also on the theory of the state, and this especially when, as in Germany, there is a material reduction of the state's functions, a very far-reaching reduction of officials, and a weakening of the strength of the state under the severe obligations which the reparation problem imposed. So far this reflection has shown itself primarily as an antithesis, and has expressed itself in Germany in the appearance of a number of radical theoretical publications. On the other hand, Theodor Niemeyer, the Nestor of German international scholars, has among others taken the facts just mentioned into positive account in a cycle of lectures with the rather metaphysical title, "The State and the Human Soul," which he gave this spring in Kiel, a series of lectures in which he scourges the aggrandizement of the state, particularly in the unlimited expansion of executive functions and of state's objects. Observing these tendencies, he says, far-seeing minds in all lands recognize a danger for the state itself, which is most unfortunate because mankind cannot do without the state as a form of life. Of particular interest is his last lecture, in which he considers the problem of how the tension of the state can be reduced, and he comes to the conclusion that the present state idea must impose

GERMANY IN TRANSITION

restrictions upon itself in the service of higher duties, and that this can only be accomplished by the supremacy of thought which exists in the individual as strength of intellect, and as a life-element in the soul of the community.

On the whole, however, to return to our premise, the German constitution has maintained itself, and proved a bulwark against the destructive forces seething in the German people, as well as against the outside factors set against the government and Germany herself.

The share of credit due the German officials should not be underestimated in this respect. They accepted the existing facts promptly. Even when their sympathies were elsewhere, they fulfilled their oath of loyalty to the constitution with the impersonal discipline and conscientiousness peculiar to them, in spite of the present unmistakably inimical tendency toward officialdom in Germany. There is no doubt that a great part of the credit for keeping the ship of state off the many rocks in its course is due to the German officials, including the *Reichswehr* (Imperial Guard). The question has often been asked as to whether our official body works with its former efficiency. It is quite clear that the efficiency of our officials must have diminished to some extent as a result of the

THE NEW GERMAN CONSTITUTION

thousand burdens since the war. Of course, the degree differs in the different classes of officials. The revolution elevated certain men who were unable to fill the requirements of their high positions. But the vast majority of the latter type have since sunk back to where they came from, and those who have retained their positions, especially in this period of reduction and restoration, have proved themselves able to occupy the same. I refer, of course, only to our professional officialdom, of which we Germans are so proud, and not in any way to the natural consequences of parliamentarism and representative democracy, which consequences, by the way, are so far not as pronounced in Germany as in the United States. We do not yet have the "spoils system." The integrity of our officials does not seem to me to have suffered. Cases such as that of the late Saxon minister Zeigner, an Independent Socialist and product of the revolution, whose impeachment on the charge of graft caused a great sensation in the spring, are decidedly the exception, and to be classified as milestones in the process of purifying the body of German officials.

While I just stated that the German constitution has maintained itself on the whole, I would have to use more decided words were I able to

GERMANY IN TRANSITION

maintain that this was entirely, or even essentially, the result of positive vital force emanating from it. This, however, is not altogether the case in my opinion. I believe, without doubt, that the great political law of stability to which I have already referred is of not inconsiderable significance for the continuous validity of the German constitution. The constitution persists through the mere fact that it is established law. This law of stability derives its particular strength and efficiency for the maintenance of the new constitution chiefly from the fear existing in extensive circles of any comprehensive constitutional changes, and of the unavoidable disturbance which would inevitably result. The dissensions in the German political parties and their inability to agree on a new form of constitution are also factors of importance. International facts likewise play a certain rôle here. I have only to remind you in this connection of the question of Austria's joining Germany.

The question of the durability of the Weimar constitution, which is here suggested, leads us to the more comprehensive and greater problem of whether and in what degree the constitution is rooted in the German people.

When we consider the relation of the Germans to their new constitution from the psychological

THE NEW GERMAN CONSTITUTION

standpoint, we must acknowledge that this new constitution contains a number of decidedly popular prescriptions, measures which are affirmed by sentiment, and which represent old as well as new heritages of culture, which would in all human judgment survive great constitutional changes in Germany. Among these I include much which is contained in the Fundamental Rights, and especially just those provisions which are often considered superfluous, for example, the idea of what we call *Freizügigkeit* (the right to travel and to reside freely where we wish throughout Germany), the guaranty of personal freedom, the secrecy of the mail, the freedom of meetings, the right to form societies, the independence of judges, and not last among them, the prescription that no German may be surrendered to a foreign government for prosecution or punishment, a paragraph which became very important owing to the question of the surrender of the so-called "war criminals." I would also include, with a certain reservation, the universal, direct, and secret suffrage for men and women.

On the other side, the Treaty of Versailles and the burdens laid by it on the German people and German constitutional life are repudiated with overwhelming unanimity by popular sentiment,

GERMANY IN TRANSITION

and this includes the paragraphs on the abolition of conscription and the so much overemphasized limitation of armament.

The Imperial Council and Imperial Economic Council are distant and on the whole indifferent features in the general consciousness. The Imperial Council is lauded as the exponent of federalism by the federalistic circles in Germany. The Imperial Economic Council is regarded as an organ of quiet economic insight and judgment, whose lack of influence is consequently regretted by economic circles. The Cabinet of the Empire has hardly aroused the interest of the masses. Sober-thinking people who are not associated with active politics have always greeted the appointment of professional experts as ministers with approval. This has been the case several times so far, especially in regard to the position of the minister of foreign affairs. Otherwise the chief interest in the Cabinet centers in the question of its dependence on Parliament.

The situation in regard to the Reichstag is rather complicated. The last Reichstag had become decidedly unpopular, because it was too old, and could no longer be considered actually representative of the German people. Furthermore, Germany has been touched, as every other coun-

THE NEW GERMAN CONSTITUTION

try has, by the great wave which is described as a crisis of parliamentarism, of which I spoke in my first essay. I refer to that movement which is the result of the fact that the immense demands of the present times have so clearly revealed the limits of the efficiency of a many-headed parliament, and its weakness in groping for new forms for the highest legislative organs. This skepticism toward Parliament has grown quite strong in Germany, and has increased under the influence of the last parliamentary election on May 4, 1924. The representation of the professions and trades, the council idea, dictatorship, and directory are some of the chief institutions proposed as substitutes, but none of these suggestions were made with a unanimity and emphasis which renders their realization probable. With these very decided reservations one cannot say that the institution of a parliament as such is repudiated in Germany by public opinion. Practical experience in the system of proportional representation has disillusioned very many.

The institution of a president is naturally a thorn in the flesh for both those of the right and those of the extreme left. But, in my opinion, very few people in Germany have really at present an expectation of this institution's being abolished.

GERMANY IN TRANSITION

The predominant majority in Germany has at least reasonably accepted the presidency *nolens volens*.

On the other hand, we are in general quite aware in Germany that the relation between the Empire and the "Lands" must be changed sooner or later, and this in the direction of Bavarian wishes as a result of the Bavarian attitude. Even the Unitarists, who are in my opinion numerically in the decided majority, are no longer able to deny this political necessity. This appears to me the only point in which the question of constitutional reform has really attained actuality, or is beginning to do so.

If the German people had to construct a new constitution today, either by a plebiscite, or by the agency of a national assembly as was the case at Weimar, the consultations would naturally take a different course than they did at Weimar. This for the reason that the parties now have a clearer conception of their positions than at Weimar. There, surprised by the novelty of the situation and the unexpected increase in their power, they frequently continued in their old tactics, and occasionally acted in opposition to their real party interests. Whether many different decisions would result from a reconsideration of the con-

THE NEW GERMAN CONSTITUTION

stitution cannot be answered. But if the German people were asked today the question of whether the Weimar constitution should be fundamentally altered or abolished, the majority would probably answer "No." In this connection it is very interesting to remember that in Bavaria, as well as in Baden, plebiscites regarding changes in their constitutions were recently held with negative results.

In only one point would a reconsideration probably manifest a different will, and this would be in the direction of the Bavarian Memorandum on the revision of the German constitution in the federalistic direction. But this brings me to the subject of my next discussion.

VI

SEPARATISM IN GERMANY

VI

SEPARATISM IN GERMANY

The scholar who probably has exerted the most lasting influence on political science in our generation in Germany is Professor Georg Jellinek, who died a few years ago in Heidelberg, a man who was also closely concerned with American political thought and theory. In his very well-known pamphlet entitled, *Die Erklärung der Menschen- und Burger-Rechte* (*The Declaration of the Rights of Men and Citizens*), which is regarded as quite a classic in Germany, he brings evidence that not Jean Jacques Rousseau's *Contrat Social*, but the Bills of Rights of the American state constitutions, became after 1776 the direct example for the *Déclaration des droits de l'homme et du citoyen* of the great French Revolution.

One of the greatest and, in my opinion, insufficiently appreciated services of Georg Jellinek is his insistence in his treatise on the *Allgemeine Staatslehre* (*General Theory of State*) upon the importance of the idea of unity for the comprehension of the state.¹ This idea of unity, which the

¹ *Op. cit.* (3d ed., 1923), p. 177.

GERMANY IN TRANSITION

American philosopher William James maintained in his book on *Pragmatism*, is the most central of all philosophic problems because it is so fruitful.

Unfortunately Georg Jellinek, while showing us the importance of unity for the comprehension of the state, and also including this word in his definition of the state, did not develop the thought in detail. Without doubt, he would otherwise have explained the relativity of the idea of unity in all the manifestations which specifically interest a scholar of political science from whatever side he may happen to approach this problem.

What appears to us in public life from a synthetic point of view as unity is dissolved by an analytical consideration into an endless, ever further divisible plurality of facts, connections, and functions, which does not even stop with the individual. The state then becomes a vast multitude of people, the line of action of endless legal relations and actions imputed to it.

The so-called *Staatswill* (will of the state) becomes a mental synthesis of numberless acts of volition of human groups, parliaments, ministries, cabinets, state officials, etc.

The legal prescription which we habitually characterize as a specific general rule of conduct acquires quite a new aspect, considered from this

SEPARATISM IN GERMANY

point of view. I am naturally not referring to the fact that such a legal prescription may be dissolved into single words and letters, or that its creation is the result of a thousand single actions. It can, besides this, be conceived as a plurality of commands and prohibitions, which are addressed to an indefinite mass of people and are intended to last an indefinite period of time, during which it will be applied in an indeterminable number of cases, and neglected in others.

Legal obedience, the premise for legal validity, becomes a constantly repeated confession of many people to legality, or at least resignation toward the law, chiefly inspired by motives of loyalty or fear.

Patriotism then appears to us as a plurality of social-psychological sentiments and conditions among the members of a social group.

The relativity of the idea of unity interests us here especially for the reason that it also provides the explanation for the possibility of dissonance among the elements of a unity, and even—in the directions not essential to the unity—between these elements and the unity itself.

Every human decision is finally the result of a struggle in the human breast. Every decision of will, as well as the formation of will in a social

GERMANY IN TRANSITION

group, is preceded by struggle, victory, defeat, and compromise which have transpired in its depths.

Every social unity is a complicated being composed of numerous sub-unities, down to the individual; sub-unities, none of which are able fully to embrace the larger composite unity.

It has been claimed that the state embraces men potentially in their whole being. This is incorrect, for love, hate, compassion, and fear, in short all the inner life of humanity, is not fully accessible to any collective group, neither the church nor the family nor the state. And therefore it is possible, in fact even usual and necessary, that all social units, beginning with man, stand in numerous social relations to many other units, some of which are relations within the substratum of the unity, some of which are relations of antagonism. This applies primarily to the social-psychological unities; but it is also analogically true of the so-called teleological unities: those manifestations which are connected by their purpose as a subjective unity.

From the point of view of purpose, the problem of unity or plurality in connection with the state is primarily a problem of legal technique. The fundamental question in this respect is that of how the state can be best organized and con-

SEPARATISM IN GERMANY

structed in order that it may most practically and easily satisfy its purpose and best fulfil the duties imposed upon it. Decentralization, centralization, state administration, and self-government, the division of competencies between the central power and the member-powers in the composite state, the relation of motherland and colony, etc., are the chief titles with which the concrete problems of this antithesis, unity and plurality, are characterized from a teleological point of view.

In all these cases a deeper examination inevitably encounters social-psychological problems, however, discovers social-psychical beings with a superindividual will, groups of people who are held and united by the psychic bond of a group will—"social-psychic unities," as we shall call them.

* * *

All these theoretical deductions, especially the fact of the relativity of the idea of unity, the distinction between the teleological and the social-psychic unity, and the principle of plurality in unity, prove to be an unusually fruitful basis for the continuance of the ideas which I explained in my discussion on the principle of self-determination, and further for the comprehension of the group of questions with which I closed my last discussion on the spirit of the new German constitution.

GERMANY IN TRANSITION

The nation is for us a social-psychological unity of individuals, united by a national consciousness. We can perceive that this consciousness of belonging together does not necessarily have as its object the desire to form a single state, and thus we recognize a difference between the conception of a cultural nation and a political nation.

We can now perceive further that the national consciousness of a nation united as a political people must not go so far as to exclude within itself the formation of sub-unities of very clear individuality and considerable exclusiveness, or to prevent divergence and antagonism between these sub-unities among themselves, or toward the higher unity of the nation and the national state. The principle of plurality in unity maintains its efficacy here. This dissonance and antinomy may be of a constitutionally technical, teleological character. But it may also be based on social-psychic contrasts.

In this you have, in my opinion, the basis for explaining all the organizational and constitutional disputes which occupied the men who framed the American Constitution; which were widely discussed before the war of secession; which compose the background of all the theoretical questions concerning the League of Nations and organized internationalism. It is likewise the key

SEPARATISM IN GERMANY

to comprehending the present differences between the German Empire and the "Lands," especially between the Empire and Bavaria, the Empire and the *Welfen* (Guelphs) and the separatistic movement.

Herein you further have the basis for an answer to the question of whether Germany is a nation, in spite of the just-mentioned troubles, and in spite of all which is happening today in the Rhine provinces, the Saar, and the Palatinate. And finally, what I have said forms, in my opinion, the premise for explaining the scientific discussion of ideas like unitarism, federalism, particularism, separatism, centralism, state administration and self-government, centralization and decentralization, and so forth.

Only one of these terms, however, is essential for the question of whether the German Empire is really a national state today, namely, that of separatism, or, as we shall add to avoid confusion, of *Reichseparatism* (separation from the Empire); for only the existence of a movement of the German people with the aim "away from the Empire" is incompatible with the idea of a German national state—that idea of which Germany dreamed for a thousand years and which became an actuality through Germany's greatest statesman, Bismarck.

GERMANY IN TRANSITION

What is the truth, however, in regard to this *Reichseparatism*? To be sure, since the revolution, beginnings of a tendency in this direction have sprung up here and there. We have been able to observe this especially in East Prussia, Pomerania, Bavaria, in the Palatinate, and in the Rhine provinces. This was chiefly the case directly after the war and the revolution, consequently in excited times, in which all kinds of mischief are accustomed to flourish.

A number of these tendencies are by no means to be regarded as separatistic in a technical sense, that is, as an at least primitively organized group movement, with the object of separation from Germany, but rather as speculations on what should be done in case Germany should be submerged in bolshevism, and exposed to constitutional chaos. The men who indulged in such speculations under these circumstances were not always the worst among us.

Every incident tending toward *Reichseparatism* in Bavaria which has become known, as, for instance by the trial of Baron Leoprechting, is in my opinion no more than an isolated phenomenon.

In the Rhine provinces what has been and is now taking place under the name of separatism is, according to the opinion generally prevailing in

SEPARATISM IN GERMANY

Germany, either *rheinisch Particularism*, a tendency away from Prussia (Prussian separatism), or an artificially rigged-up movement, instigated from without, and supported chiefly with foreign money by a few fanatics or criminals, far too weak and too little rooted in the soil really to be called a movement, much less to be dignified by an "ism." What exists here is in no way *Reichseparatism*.

I cannot substantiate in detail the opinion herewith expressed, which by the way is supported by men such as President Wilson, General Allen, Mr. Noyes, and other non-German witnesses, for the reason that I would be obliged to produce a great amount of documentary evidence. I would have in particular to acquaint you with the contents of an official publication¹ the climax of which is a protest against the remarkable action of Major Louis, who on October 24, 1923, declared the Palatinate to be independent in a session of its District Assembly (*Kreistag*), fortunately without any success.

Such circumstantiality would necessarily end in a detailed and extremely sharp criticism of a certain government. But, according to the plan of these discussions, I am fortunately not under an

¹ "Notenwechsel zwischen der deutschen und der französischen Regierung über die separatistischen Umrübe in dem besetzten Gebiet," *German White Book* (1924), No. 1.

GERMANY IN TRANSITION

obligation to support the opinion just uttered with evidence, for my chief purpose is to reproduce German opinion and German sentiment for you, and in regard to this point there is only one opinion in Germany.

Another question, not to be confused with that of *Reichseparatism*, is that of whether there exists a people's movement with the aim "away from Prussia."

This Prussian separatism confronts us in a threefold form: It is, first, a movement within Prussia. In certain territorially limited parts of Prussia there is a movement to separate these parts from Prussia and to constitute them as new "Lands" within the structure of the German Empire. The Guelph movement in Hannover and elsewhere, and certain tendencies in the Rhineland, are to be valued thus. We shall call this movement "Prussian special separatism."

Prussian separatism is, secondly, an instrument in the hands of certain Reichsfederalists to loosen the structure of the German Empire. This is particularly so in the case of the extreme groups of these federalists, whom we shall call "separatistic federalists," and of whom I shall soon speak. This movement we may call "Prussian general separatism."

SEPARATISM IN GERMANY

Thirdly, by the slogan *Zertrümmerung Preussens* ("Destruction of Prussia") an instrument is given Prussian separatism which has been used by general separatism, but especially by the German Unitarists who wish to achieve a German unitary state by means of a radical solution of the Prussian-German problem.

What is the Prussian-German problem? This problem means, as defined by the noted German teacher of constitutional law, Anschütz, "the whole nucleus of questions relating to the correct union of the Prussian state with the German Empire."

There are four solutions proposed for this problem. First, the relation between the Empire and Prussia can be built up on the principle of Prussian hegemony within a German federated state. Secondly, the problem can be solved by Prussianizing Germany. A third solution is the transformation of Prussia into a *Reichsland*—the official term which was adopted to define the relation of the Empire and Alsace-Lorraine, but for which I am unable to find an exact English expression, as the literal translation "Empire's land" does not seem possible, and the term "dominion," which I would be tempted to use, is only applicable to colonies. The fourth solution is that of destroy-

GERMANY IN TRANSITION

ing Prussia, dividing it more or less completely into its different provinces, either as the equal members of a German federated state, or as provinces of a unitary state, in which these "Lands," decentralized to the greatest possible extent, would have equal rights with the other member-states.

The third of these propositions, the idea of a *Reichsland*, demands a short explanation. The idea on which it is founded is that Prussia, and only Prussia of all German "Lands," shall renounce her state rights, that the organs of the Empire shall administer the affairs of a *Reichsland* Prussia invested with broad autonomous competencies. Prussian laws would be passed by its representatives in the Parliament of the Empire and so forth.

I would not enlarge on these ideas, which, by the way, date as far back as the year 1848, were it not for the fact that they are much discussed in Germany, and are supported by men to whom great influence must be attributed in public affairs.

The doctrine of Prussian hegemony in the German Empire was to a large extent embodied in the German constitution in 1871, and during the course of its development became associated with certain premises of the second proposal, the idea of Prussianization. The way in which this

SEPARATISM IN GERMANY

hegemonic principle was incorporated in the constitution of 1871 without wounding the vanity and sensitiveness of the non-Prussian federated princes must be characterized as a constitutional and political master-stroke.

The thought of introducing a German *Einheitsstaat* (unitary state) by destroying the statehood of Prussia as well as of the other members of the German Empire dominated many brains after the revolution. It especially haunted the father of the new constitution, Professor Hugo Preuss, who was then imperial minister of the interior and who gave it quite a pronounced and sharp expression in his first draft of the constitution. Paragraph 11 of this draft provided:

The German people may form new autonomous republics within the Empire without consideration of the state boundaries until now in existence, in so far as the tribal nature of the inhabitants, the economic conditions, and the historic relations warrant the formation of such states. Newly formed autonomous republics must comprise at least two million inhabitants.

And in Paragraph 29 he even sketched the method of dividing the German Empire for election purposes until the definite formation of the new autonomous republics. He recognizes a Prussia which consists only of East and West Prussia,

GERMANY IN TRANSITION

and the district Bromberg, a Silesia, a Brandenburg, an autonomous Berlin, a Lower Saxony; he treats the three Hansa cities as a unit, then follows Upper-Saxony, together with the district of Merseburg and parts of German-Bohemia. (You will notice here the so-called *Grossdeutsche Gedanke*, a term which can only be inexactly and rather confusedly translated as the idea of a greater Germany, and is not to be in any way confused with the Pan-German movement.) As an eighth unit Thuringia follows, then Westphalia, Hessen, the Rhine provinces, Bavaria, Würtemberg, Baden, then—as another expression of the *Grossdeutsche Gedanke*—German-Austria, and finally Vienna.

The German constitution of 1919 poured much water into this unitaristic wine. Article 18 provides unusually complicated provisions for the process by which the existing boundaries of “Lands” can be changed and new German “Lands” created, and thereby implicitly relegates the final solution of the Prussian-German problem to the future.

It is interesting to add that Article 18 has not as yet led to the diminution of Prussia. In two cases so far the question of separating parts of Prussia and constituting them as separate German “Lands” has taken an acute form in Germany. I refer to Upper Silesia and the Hannoverian ques-

SEPARATISM IN GERMANY

tion. The Upper Silesians answered the question of whether they wished to form a separate "Land" or remain within Prussia submitted to them on September 3, 1922, according to Articles 167 and 18 of the constitution, in favor of remaining with Prussia. They now constitute, according to a Prussian law, an autonomous Prussian province in so far as the territory did not come under Polish sovereignty.

The recent plebiscite of the Hannoverians who, as is well known, lost their sovereignty in the year 1866, and were incorporated in Prussia, on the analogous question of whether they should remain with Prussia or form an independent "Land," led to the same result.

What I have said of Article 18 applies only to the destruction of Prussia. As a matter of fact, the latter has been enlarged by the incorporation of Pyrmont, a part of the "Land" Waldeck-Pyrmont, as a result of this article by an imperial law of March 24, 1922, and the question of whether Waldeck should also be incorporated in Prussia is still pending. Furthermore, Article 18 is the legal background for the union of the Lilliputian states in Thuringia, which are now joined as one "Land," Thuringia. Coburg, a part of the former Thuringian state Sachsen-Coburg-Gotha, also lost

GERMANY IN TRANSITION

its independence on the ground of Article 18, being incorporated in Bavaria by an imperial law of April 30, 1920. The rest of Sachsen-Coburg-Gotha was absorbed by Thuringia.

If I may venture to add a word regarding Prussia's hegemonic position in the German Empire, it is to be noted that the new constitution has entirely abolished it, not least by the fact that the close and manifold association between the Prussian and German official organizations which existed formerly has been dissolved. This association found its culmination in the possession of the imperial dignity by the Prussian crown, a combination which rendered antagonism between the policy of the Empire and Prussia practically impossible. This has now been changed, and in fact slight differences between Prussia and the Empire have already manifested themselves. But the hegemonic position of Prussia has also been curtailed by according her too few representatives in proportion to her inhabitants in the *Reichsrat* (Council of the Empire).

Today the Unitarists, with Professor Preuss at their head, have changed their opinion, and are at present the most active opponents of this idea of smashing Prussia which they formerly supported.¹

¹ See H. Preuss, *Um die Reichsverfassung*, Berlin, 1924.

SEPARATISM IN GERMANY

One has the impression that both tendencies, special, as well as general separatism, in Prussia have today passed their zenith, especially general separatism. It is naturally impossible to prophesy what tomorrow may bring. The special separatism of Prussia is at least shelved. A number of resolutions have been passed by the local party organizations in the Rhineland not to consider this question during the occupation, and the defeat of the Guelphs in the plebiscite mentioned above also illustrates my statement. The *Vorabstimmung* (preliminary plebiscite) instigated by the German Hannoverians, on May 18, 1924, in five districts of Hannover, on the question of the secession of the province of Hannover with the exception of the municipal district Aurich, from Prussia, and the establishment of this province as an independent German "Land," lacked the third of the voters (589,600) legally necessary by 140,639 votes. (There were only 448,961 votes in favor of the secession of the territory in question.) It is of particular significance that this one-third was not reached in any of the municipal districts concerned.

This result was the more important, as a victory of the Guelphs would doubtless have provided an incentive for further secessionistic

GERMANY IN TRANSITION

movements, for there are at present certain tendencies to unite this territory with other "Lands."

Another movement at present in the foreground of discussion in Germany is the so-called "federalism." This expression, "federalism," as well as that of "federalists," has not quite clearly defined usage in Germany today. It is sometimes applied to the idea of and tendency toward the *Bundestaat* (federated state), in the same sense, if I am not mistaken, in which it is generally used in the United States. Apparently, however, it is being applied more and more in Germany to all political tendencies away from the unitary state—the ideal of the tendency designated as unitarism—whether in the direction of a federated state or in that of a *Staatenbund* (confederation of states).

Both species of federalism, that directed toward the federated state as well as that toward the confederation of states, have one thing in common: both wish to emphasize the statehood of the parts of the higher unity. But only the first species, the tendency toward the federated state, is really seriously interested in the state unity of the whole, only this tendency earnestly wishes a state plurality and at the same time a state unity—a state unity constructed from a plurality of states.

SEPARATISM IN GERMANY

The second more radical species of federalism, which we shall call "separatistic federalism," when consistently analyzed negates the state-bond between the individual state units, and substitutes in its place a treaty, an alliance. Thus the tendency toward *Foedus* is typical of separatistic federalism.

Consequently, we have here four different political tendencies: (1) absolute separatism, which strives for the complete dissolution of a state unity of any kind, the abolishment of every legal connection between its former parts; (2) separatistic federalism, which tends in the direction of a confederation of states; (3) pure federalism, as we shall call it, the ideal of which is the federated state; and finally, (4) the unitary state, with its many variations.

As we are here dealing with tendencies, one does not, in fact, exclude the other. It is possible to point out the partial realization of several of these principles in one and the same state body at the same time, unitaristic as well as federalistic and separatistic. This is as much the case in the constitution of any other composite state body. Pure types exist only in theory, never in reality.

In this group of political tendencies what we call "particularism" has no place. It is often

GERMANY IN TRANSITION

confused with separatism, and may frequently, though not necessarily, manifest itself as such. It also often appears as federalism, in one of its two forms, but this again is not necessary.

Particularism is simply the strongly developed social-psychological feeling of unity in a part of a larger social unit, the concentration of the smaller unit, and the preference for it without necessarily opposing the larger unit.

Pure federalism, which strives for the federated state, may manifest itself alternatively or cumulatively in the two directions typical of the federated state. First, it may manifest itself in the claim of the member-states to participate in the formation of the will of the federated state, especially in its legislation. Secondly, it may appear in the demand for a circumscription of the competencies of the federated state, on the one hand, of the members, on the other, and of the relations of these competencies to each other.

Federalism has, as is known, its chief stronghold today in Bavaria. The differences, which have been very serious, between the Empire and Bavaria are to be attributed to various causes. Apart from a constitutional Bavarian particularism combined with, and stimulated by, the small love which many Bavarians have for the Prussians, and com-

SEPARATISM IN GERMANY

bined with certain current mass-pathological phenomena, two reasons for this come especially into consideration—party politics and federalism.

As for the first reason, the dominating political as well as official attitude in Bavaria has been directed decidedly farther to the right than in other parts of Germany, especially Berlin, since the overthrow of Kurt Eisner's dictatorship in Bavaria with the assistance of Prussian forces. Since the last elections for the Reichstag, however, this dissonance has been not inconsiderably reduced.

To this is added the fact, closely related both as cause and effect, that Bavaria is the residence, refuge, field of operations, and center of activity of certain radically directed non-Bavarians, with General Ludendorff and Hitler at their head. At the present time, therefore, two great movements are operating side by side in Bavaria, the "Blue-White movement," named after the Bavarian national colors and containing men like Kahr, Lossow, and Seisser, and beside it the "Black-White-Red movement," named for the colors of the old German Empire, whose extreme exponents are Ludendorff and Hitler, and which contains much black and white Prussian character. Each of these movements is engaged in inner political

GERMANY IN TRANSITION

party struggles with Berlin. Otherwise they have, as you know, as a result of differences relating to time and method, become inimical brothers, who faced each other with the most bitter resentment and wrath in the Hitler trial before the bar of the Munich *Volksgericht* (People's Court).

Naturally, I do not intend to assert that all Bavaria belongs to one of these two factions. On the contrary, the Bavarian elections of April 6 and May 4 gave almost the same multi-colored picture in the composition of the Bavarian *Landtag* (parliament) as in the other German parliaments and the Reichstag, only the color combination is a little different. The Bavarian People's party, which is there the *Zentrum*, and Kahr's party received 46 seats; the *Völkische Block*, 23; the Social Democrats also 23, the *Mittelstandsbund*, 10, the Communists, 9, etc.

The Blue-White party is the chief exponent of the federalistic idea in Bavaria. In fact, that overemphasis upon the unitaristic idea, combined with a dissonance in political sentiment between Bavaria and Berlin, is the main reason for the differences between the Empire and Bavaria is proved by glancing over the incidents which have led to conflict and dissatisfaction. Almost invari-

SEPARATISM IN GERMANY

ably these have been occasioned by measures of the Empire affecting Bavaria which are in opposition to the political belief prevalent there, and which, according to Bavarian opinion, at the same time injure Bavarian interests. This is especially apparent in both the chief disputes, first, in that which resulted from the passage of the *Gesetz zum Schutze der Republik* (Imperial Law for the Protection of the Republic) and the *Reichs Kriminalgesetz* (Imperial Criminal Police Law) after the murder of Walter Rathenau in the summer of 1922. Both these laws were regarded by the Bavarian government, and by the prevailing public opinion in Bavaria, as directed against the existing political tendencies as well as against the "sovereignty" of Bavaria, with the result that Bavaria itself passed a law for the protection of the Republic. The president of the Bavarian ministry at that time, Count Lerchenfeld, said in an official announcement:

These measures had an exceptional character contradictory to the essentials of true democracy. They were directed towards a class domination and to a socialistic unitary state striking ruthlessly over all the constitutionally assured sovereign rights of the "Lands."

A second dispute arose from the taking over of the *Reichswehr* stationed in Bavaria at the

GERMANY IN TRANSITION

end of October, 1923, by the Bavarian government. This measure in turn was caused by the dispute over the confiscation by the Empire of an ultra-radical paper appearing in Bavaria, the "*Völkische Beobachter*," which is an organ of the National Socialistic party, certainly in itself a small thing.

The opinion that it is federalism which inspires the Bavarians in their attitude is underscored with particular emphasis by the "Memorandum on the Revision of the Weimar Constitution," presented January 8, 1924, by the Bavarian government to the imperial government. This "Memorandum," which is drawn up on essentially the same lines as the federalistic program of the strongest Bavarian party, the Bavarian People's party, expresses the aspirations and aims of the Bavarian Blue-White party more completely than any comment I could make upon them. Consequently, I may be permitted to quote a few sentences to you from this "Memorandum," which is bound to become a milestone in the relations between Bavaria and the Empire, and in the history of the German constitution. The importance of this "Memorandum" is considerably increased by another memorandum with the title *Das Reich und die Länder* ("The Empire and the

SEPARATISM IN GERMANY

‘Lands’”) presented to the Landtag of Baden by its president, Dr. Eugen Baumgartner, at the request of the *Geschäftsordnungsausschuss* (Commission for Proceedings), November, 1923, a document which sounds the same refrain as the Bavarian “Memorandum” from which I now read:

In the Weimar constitution a unitary spirit contrary to that of Bismarckian Federalism manifested itself. . . . The new form of the Empire’s existence has proved itself unfruitful, the member-states have sacrificed more vital strength than the Empire has gained by unitarism and centralization. According to all historic experience, states can only be preserved by the forces which have created them. *In the case of the German Empire these were the forces centered in and emanating from federalism, not unitarism.* . . .¹

The idea of *national unity*,¹ which has experienced its constitutional incarnation in the Empire, would not suffer any detriment by a reversion to Bismarck’s federalism. Statehood of the “Lands” is not synonymous with national impotency; on the contrary, the German national state is only possible through the concentration of the historically founded German member-states, and on the basis of their constitutional and cultural existence. The true exponent of Germanism [*des deutschen Volkstums*] is not a unitary state composed only of individuals, but the multitude of constitutional and national (*völkisch*) organisms as, and in so far as, they have been preserved in the German federated state. In the unitarism of the Weimar constitution the idea of the national state exceeds the optimum of unification and concentration

¹ Italics mine.

GERMANY IN TRANSITION

to its detriment. The unitaristic centralization of the Weimar constitution does not do justice to the historic German idea of the national state which is based on and emanates from the strong dynamic self-consciousness of the member-states toward the whole.

It is clearly apparent from these words that Bavarian federalism is based primarily on social-psychological sentiment.

It must not be overlooked, however, that there are in the Bavarian "Constitutional Memorandum" a number of arguments of a more technical administrative character in favor of a regressive revision of the constitution of the Empire, which to my regret I cannot here quote in detail. The most interesting feature of the same is perhaps that which maintains that:

The political position of the economic powers, through the formation of cartels, trusts, and organizations embracing the employers and the employees of the whole Empire, is today so strong and hypertrophic that it may be said with a certain justice that not the state but economic power rules in the Empire, and this to the detriment of the state. The liberation of the Empire from its position in relation to economics is not possible without a considerable reduction of centralization. In place of the political center toward which economic power is now directed, and which is controlled by it, a plurality of centers must again be established in order to break the power of the economic organizations which force their will upon the Empire today.

SEPARATISM IN GERMANY

I think this may at the same time be quite an interesting addition to what I said on this subject in my discussion of the German constitution.

A further, extremely important fact can also be ascertained from the first part of the "Memorandum" quoted above: The Bavarian constitutional movement has in fact no separatistic tendencies according to this "Memorandum." It affirms the German Empire, even a strong German Empire, and it affirms the German nation. It only negates unitarism, and proclaims state plurality in the unity of the national German state, pure federalism according to the Bismarckian pattern.

In this last respect the "Memorandum" is not accurate. The Blue-White Bavarians do not, in fact, wish a reversion to a Bismarckian empire, for this would necessarily also mean a reversion to Prussian hegemony in the Empire. Bismarck's empire was a federated state, according to the decidedly prevailing opinion, which is disputed by only a very small group led by the deceased Munich professor of constitutional law, von Seydel, whose views closely resemble those of Calhoun in the United States. But the constitution of this federated state was based upon a masterfully conceived psychological and technical

GERMANY IN TRANSITION

system of Prussian hegemony in Germany and over the member-states, a system which at the same time shielded the vanity and sensitiveness of the federated princes, and the particularism of the member-states and their inhabitants, especially that of Bavaria to whom a number of *Reservat-Rechte* (reserved rights) were accorded on the basis of the treaties of alliance which had preceded the foundation of the Empire. This Prussian hegemony manifested itself especially in the "Kaiser" title for the wearer of the Prussian crown, and the dominating rôle which Prussia played in the *Bundesrat* (Council of the Confederation). It extended, however, as a result of the growth of a number of new relations of an organizational character between Prussia and the Empire, much further than is apparent from the text of the imperial constitution and was continually increasing with the passage of time.

Bavaria naturally does not wish this Prussian hegemony back. It does not wish a hegemonic federalism, but rather one which is based on the principle of federalistic equality *& la* Constantin Frantz, Bismarck's great opponent, of whom the apt words were once written by the German scholar Triepel, "He remained unto his end the gloomy prophet who beheld the horsemen of the

SEPARATISM IN GERMANY

Apocalypse riding from Prussia against confederated Germany."

Yet, not even the statement that Bavaria wishes federalistic equality is quite correct, for it is apparent from the "Memorandum" that the Bavarian government wishes a restoration of some of the old reserved rights of Bavaria in connection with traffic and especially the railroads, and also the post and telegraph systems. She really wants an inequality in favor of Bavaria.

Several minor demands in excess of the Bismarckian constitution might be mentioned but the most important features of the Bavarian aspirations are the two mentioned above: First, the regaining of greater influence by the "Lands" in the formation of the will of the Empire, and to this end restoration of the *Reichsrat* (Council of the Empire) to the position of the old *Bundesrat* (Council of the Federation) with a decisive influence in the legislation of the Empire.

The second direction of these ambitions tends toward a new circumscription of competencies between the Empire and "Lands" in many different spheres to the advantage of the "Lands," which are incidentally to be called "states" again.

It would be going too far to explain the details to you here. I wish to mention only the two

GERMANY IN TRANSITION

most important points: the reconstruction of the “Lands” independent power of organization by reinvesting them with so-called constitutional autonomy, of which Article 17 of the constitution of the Empire has deprived them. And secondly, the investment of the “Land” with full competency in the politics and administration of culture and education.

The fact that Bavaria is a Catholic country, whose dominating party is the Catholic Bavarian People’s party, is the paramount reason for this demand. These two matters belong exclusively in the hands of the “Land,” according to the Memorandum, which reads:

The purpose of culture belongs to the state. German culture has grown and blossomed from the soil of the German races (*Stämme*) and their state organizations. The spirit of the people, which varied according to their race and their state form, was the soil which nourished it. Decentralization, not centralization, has stamped German culture with its individuality. Even after the unification of the German races (*Stämme*) in a federated Empire this decentralization remained. The Empire experienced the realization of its state purpose of culture in its member states; it restricted itself to supporting and assisting the states in their administration of culture; the state was the pillar of the policy and administration of culture. Thus the realization of the purpose of culture was the task of the member states. And this kind of division of labor was to the equal advantage of

SEPARATISM IN GERMANY

both Empire and state. It corresponded to the German people's will for culture in the same degree that it did to their form of state life.

An alteration in this relation of the state and Empire in the sphere of culture must affect the existence of the German states as much as that of German culture. The unitaristic spirit of the Weimar constitution did not hesitate to do this, however. . . .

The Bavarian people wish to remain the masters of their own souls, and the masters of the souls of their state; it is a Christian people, and wishes above all to hold fast to the Christian state which it has created for itself, because it is filled with the conviction that without the strength resting in Christianity reconstruction is not possible, and that the authority of the state cannot be upheld if the divine authority is no longer recognized.^x It does not see any guarantee for this conviction, however, if it is to be made dependent upon political powers, which in the last and decisive questions are frequently conclusive in the Empire.

So much for the Bavarian "Memorandum," which writes the fateful problem of church and state on the wall, and this in a surprisingly sharp and open form.

The Unitarists, and others as well, oppose the federalistic tendency on which it is based with much energy. They call attention especially to the fact that the time is most unsuitable for a change of constitution in Germany, because it would inevitably weaken the Empire. Minister

^x Italics mine.

GERMANY IN TRANSITION

Preuss even calls this Bavarian "Memorandum" a friendly invitation to national suicide. Attention is especially called to the fact that such a policy means playing France's game, as nothing would be more acceptable to France than German "federalism." Numerous pieces of evidence support this assertion. For example, in a communication of November 29, 1918, of the French ambassador to the secretary of state of the United States, reprinted in Baker's *Wilson*,¹ it is explicitly declared that the French are interested in the furtherance of German federalism. The French scholars Brunner and Berthelémy state that in consideration of the unitarism which has attained expression in the new German constitution, France has lost the war politically. And for us Germans there are in addition numerous proofs and indications of attempts since the beginning of the war to destroy German unity. Recently the text of a letter of September 30—October 13, 1914, No. 497, from the Russian ambassador to France, Iswolsky, addressed to the Russian minister of foreign affairs, Sassanoff, was published in the German press in which we read:

The chief object of France in this war, and therein all three Allied Powers are united, is the destruction of the

¹ *Op. cit.*, Doc. III, p. 57.

SEPARATISM IN GERMANY

German Empire, and the greatest possible reduction of Prussia's military and political strength. *One must arrange the matter so that the German member-states will themselves be interested therein.*¹ It is still too early to discuss the details of the future formation of the German state; England will probably demand the creation of an independent Hannover, which will naturally not be opposed by Russia and France. Schleswig-Holstein must be given to Denmark, etc., etc.

What is going to happen? The German government has politely acknowledged the receipt of the Bavarian "Memorandum," and has begun a consideration of its contents. The Blue-White party in Bavaria has suffered severe losses in the last election; the plebiscite on the question of whether Bavaria wishes a state president, which she now lacks, submitted by the dominating Bavarian party at the same time as the elections, was to their surprise answered in the negative by the Bavarian people; and considerable relaxation in the tension between the Empire and Bavaria has taken place. The chief actors in the last event, the so-called *Hitler-Putsch*, have left the stage. According to the American newspapers, General Ludendorff has now even broken off the party association with Hitler. General von Seckt, the commander-in-chief of the *Reichswehr*, has held a military review in Bavaria. But all this

¹ Italics mine.

GERMANY IN TRANSITION

occurred only after a governmental agreement, which gave heed to the Bavarian wishes in the adjustment of the military relations in Bavaria, had been made between the governments of Bavaria and the Empire. This is parallel to the events which followed the disagreements after Rathenau's murder. This incident ended by a similar agreement. We may also notice a "traffic agreement" of the same character between Bavaria and the Empire. And in the Third Emergency Tax Law, we find a very far-reaching prescription (Sec. 42), which hardly was to be expected therein, according to which the regulation and independent administration of public welfare, educational and school questions, and the police are transferred to the individual "Lands." In other words, without changing the constitution, the Bavarian wishes have received a high degree of consideration in a fashion which must not only interest the teacher of public law, but arouse certain legal doubts within him.

But what will still happen? Everything which has occurred so far can only be considered as temporizing. One can reply to this question only with the expression of good hopes.

If, however, you ask the question, "What is your Fatherland?" of me, or any German, in the

SEPARATISM IN GERMANY

vast majority of cases the answer would be given in the words of Freiherr von Stein, the great German reformer, after Napoleon had decimated Prussia and Europe: "I know only one Fatherland, and it is called Germany."

INDEX

INDEX

- Aaland Islands, 94, 124
Africa, 100
Agricultural reforms, 128
Air forces, 90
Albanians, 117, 124
Allen, General, 197
Allied and Associated Powers, 121, 122, 220
Allied Control Commissions, 55
Allies, 33, 46, 47, 51
All-Russian Congress, 143
Alsace-Lorraine, 119, 128, 199
Ambassadors, Conference of, 168
America, 114; *see* United States
American Committee, 43
Americans, 49, 81; problems of, 127
Anarchy, 147
Anschütz, 199
Anti-Semitic movement, 15, 16, 127
Arbitration, 87, 97, 99, 100; court of, 101
Armaments, 90, 99, 182
Armenian atrocities, 128
Armistice, 55, 57
Asiatic problem, 127
Aurich, 205
Austria-Hungary, 115, 134, 180; dissolution of, 123
Baden, 185, 213
Barcelona, 94
Baruch, Bernard, 38
Baumgartner, Dr. Eugen, 213
Bavaria, 184, 195, 196, 208 ff., 211 f., 216, 217; elections in, 210
Bavarian Memorandum, 184, 213, 214, 217, 218 f., 221
Bavarian People's party, 17, 212, 218; attitude of, 184; (*Zentrum*), 210
Belgium, 40, 41, 118; Flemish question in, 124
Berlin, 98; flag incident in, 95
Bernhardi, General von, 163
Bessarabian question, 125
Bills of Rights, 189
Bismarck, 159, 162, 195
Black-Red-White movement, 209
Bliss, General, 43
Block, P. J., 140
Blue-White movement, 209, 210, 212, 215, 221
Böhme, Hildebert, 126
Bok, Edward, Peace Award of, 105
Bolshevism, 22, 196
Bolshevists, National, 17
Bosnia-Herzegovina, 117
Bossuet, 148
Bouvines, battle of, 140

GERMANY IN TRANSITION

- Brest-Litovsk, 45, 134, 142, 143, 144
British Empire, 123
Brockdorff-Rantzau, Count, 48
Buffer states, 24
Bulgarians, 117, 124
Bundesrat, 158, 216, 217
- Calvo, 36
Carnegie Endowment, 8
Casa Blanca dispute, 101
Catholics, German, 17; *see Zen-trum*
Cecil, Lord Robert, 43
Central Powers, 117, 144
Chancellor of the Empire, 166
Christian Social party, 17
Civil damages, 45
"Clean hand, the," 87
Clemenceau, 153
Coburg, 203 f.
Collectivism, 141
Commission of Inquiry, of the Reichstag, 98
Communism, 21
Communists, 14, 17, 21, 210
Compensation, 67; *see Reparation*
Conference, Washington Labor, 20
Congress, declaration of, 87
Conscription, 182
Conservatives, 15
Constitution: American, 194; Memorandum on the Revision of the Weimar, 212 f.; the new German, 20, 53, 122, 153, 155, 157, 161 ff., 164, 168, 171 f., 178, 179, 180, 193, 202, 213, 220; the old, of 1871, 157, 158, 160, 163, 164, 200 f.; of Paul's Church (Frankfurt), 1849, 157, 158, 164
- Corfu, Declaration of, 116
Council idea, 183
Council of People's Commissioners, 161
Council of the Empire, 161, 166, 182, 204
Croatia, 116
Croat nationalists, 117
Crusades, 139
Cuno, Chancellor, 175
Currency, stabilized, 68
Customs, 65
Czecho-Slovakia, 115, 118; language of, 115
Czechs, 115, 124, 125
Czernin, 134 f.
- Dalmatia, 117
Danzig, 24, 92, 118, 119; separation of, 120
Davis, Norman H., 38
Dawes Commission, 58; plan, 65, 169
Dawes Report, 33, 48, 58, 64, 66, 67, 69, 70; basis for negotiations, 67
Democratic party, 18, 91
Denmark, 118
Deutsche Industrie und Handelstag, x

INDEX

- Disarmament, 46, 85, 97; Commission for, 94
Dombrowski, 176
"Draft Treaty for Mutual Assistance," 43
"Draft Treaty of Disarmament and Security," 43

East Prussia, 120, 196; Masurians in, 119
Ebert, 121
Economic Council, 163; Imperial, 182; Temporary Imperial, 156, 166
Economic freedom of action, 66, 80
Eisner, Kurt, 209
Elections, 18, 21, 22, 119; laws, 162
England, 87, 96, 101, 113, 130
Entente, 33, 56
Eötvöes, Baron, 130, 132
Erfurter Program, 163
Eupen-Malmedy-Monschau, 92, 95, 119
Europe, 54, 88, 112, 114, 141
Expansionism, 78, 142

Fascists, German, 17
Federalism, 6, 147, 182, 195, 206, 208, 213, 220
Federalist, 114
Fénelon, 148
Fichte, 96
Financial Committee, 94
Financial Conference in Brussels, 94
Finke, 140
Fischer, Dr. Eugene, x
France, 87, 96, 100, 118, 157, 219
Frankfurt, 163, 164
Frantz, Constantin, 216
French *Code Civil*, 37
French, conditions of peace in, 48
French Revolution, 140, 141, 189
French Yellow Book, 35
Fried, 96
Friedrich, Wilhelm IV, 162
Fries, Johann Jacob, 96

Garanties, 33, 41, 43, 44; "requisitions," 42; *see* Guaranties
Geneva, x, 94, 104
Genoa Conference, 117
George, *see* Lloyd George
German-American Mixed Claim Commission, 90
German-Austria, 24, 115, 118, 122; question of union, 119, 121, 202; struggle, 162
German-Bohemia, 119
German Empire, 121, 122, 153, 158, 159, 195, 198, 201, 209; Cabinet of, 182; division of, 202
German League of Nations Union, x, 91
German minorities, 117 f.
German National Assembly, 161
German party system, 12, 13
German Peace Delegation, 50
German people: ability to work, 27; minimum of existence, 66; moral soundness, 28

GERMANY IN TRANSITION

- German People's Liberty party, 16, 19, 91
German Republic, the new, 10, 160; proclamation of, 167
German statistics, 55, 60
Germanic Confederation of 1815, 95
Germans, 116, 117; ancient, 140; Sudete, 121
Germany, 33, 47, 100, 134, 216; abstinence from manufacture, 175; affirmation of Dawes Report, 68; and arbitration, 100, 101; attitude to foreign problems, 52; bankruptcy, 174; bolshevism, 22; capacity of, 57, 64, 71; chaos in, 13; charity in, 61; conditions, 58; cost of living, 64, 66; creditors, 70; crisis in commerce and industry, 70; debt of, 6, 67; emigration from, 59; exports of, 68; foreign minorities, 118; foreign policy, 89; government, 93; guilt of, 47, 48, 50; independence, 53; lack of books, 8, 61; no leader in, 19; and League of Nations, 52, 75, 91, 93; luxury in, 62, 63; moral disease, 29; morally responsible, 38, 51; and Peace Conference, 98; personal freedom, 181; political conditions, 3; power of production, 46; right to existence, 68; rights in, 181; separatism, 119, 189; sovereignty, 53; spiritual contact of, 8; no spoils system, 179; as a state, 47, 153; will and opinion of, 9, 13; in world-market, 66
Geschäftsauflsicht, 64
Government, form and purpose of, 6
Grecian sovereignty, 117
Greeks, 124
Grossdeutsche Gedanke, 202
Guaranties, 34, 44, 56, 68
Guelph movement, 198
Guelphs, 195, 205
Guilt: acknowledgement of, 50; question of Germany's, 40, 49, 50, 90, 97
Guilt Commission, 40
Gypsy minorities, 117
Habsburg dual monarchy, 131
Hague Conferences, 97, 98, 100
Hague Court, 34, 101, 124
Hague Opium Convention, 97
Hannover, 198
Hannoverian question, 202, 203, 205
Hegel, 163
Helfferich, 65
Herder, 96
Hitler, 209; group, 15; party, 15, 16, 19, 21; -Putsch, 221; Republican, 15; trial, 15, 20, 210
Hobson, Francis Thayer, x
Honor, points of, 67
House, Colonel, 47
Housing problem, 60
Huerta, 87
Hungary, 118; West, 119
Hygienic Conference, 94

INDEX

- Imperialism, 78, 96, 139
Income: per capita, 65; people's (*Volkseinkommen*), 65
Independence, Declaration of, 113
Independents, 14
Industry, Imperial Association of German, 175
Initiative and referendum, 165
International Labor Office, 94
International law, 7, 40, 41, 79, 81, 154; penal, 43
International loan, 68
International obligations, 90
International Prize Court, 100
Internationalism, 45, 47, 69, 77, 78, 79, 80, 83, 95, 105, 106
Iron, 139
Irredenta, 113, 138; *Europa*, 126
Iswolsky, 220
Italians, 117
Italy, 17, 62, 96, 118, 142
James, William, 190
Jaworzina question, 125
Jellinek, Georg, 148, 153, 189, 190
Jews, 116; *see* Anti-Semitic movement
Joffe, 143
Jugo-Slavia, 117, 118
Justum et injustum bellum, 38, 39
Kaeften, 119
Kahr, 209
Kaiser, the, 40, 153
Kant, Immanuel, 54, 82, 95, 96, 133, 146, 148
Kapp-Revolt, 174
Klotz, 47
Königgrätz, 162
Königsberg, 54, 60
Krause, Carl Christian Friedrich, 96
Kriege, Dr., 98
Kuhlman, von, 134 f., 143
Kunze (*Knüppel-Kunze*), 16
Kurfürsts, 176
Lamont, 47
Land, 154
Landliste, 22
"Lands," German, 11, 166, 175, 182, 195, 200, 202, 206, 213, 217
Lansing, 147
Laun, Professor, x, 124, 130
Lausitz, Saxon, 118
Law, 5, 6, 104; and ethics, 6; and economics, 6; international, 7
League of Nations, 4, 43, 52, 85, 86, 92, 101, 103, 104, 120; Council, 89, 122, 168; Covenant of, 41, 83, 85, 86; Geneva, 75, 91, 104, 125; and Germany, 70, 86, 89, 90, 91, 92, 95; idea of, 104; International Court of the, 128; new members, 90; and United States, 86, 88
Left wing of German party system, 24, 91, 183
Legislation, economic, 156
Leoprechting, Baron, 196
Lerchenfeld, Count, 211
Liberty, 53, 54

GERMANY IN TRANSITION

- Lieber, Francis, 148
Lithuania, 118, 121, 125, 126; literacy, 121
Lithuanians, 124
Lloyd George, 50, 51, 70
London plan of payment, 55, 64
London Times, 51
Lossow, 209
Louis, Major, 197
Luchaire, Professor Honoraire Julien, 4
Ludendorff, General, 16, 209, 221
Luther, Imperial Minister, 66
Macaulay, 140
Magna Charta, 140
Magyars, 116, 117, 124
Maingau, occupation of the, 92
Mandates, 85; Commission for, 94
"Manouba," dispute over, 34
Mark, decline of the, 59, 61; paper, 28, 67
Marks: gold, 65, 66, 173, 175; loan, 68
Marx, Chancellor, 123
Marxism, 15
Masurians, 119
Member-states, 154
Memel, 119; question, 92, 120
"Micum treaties," 56, 176
Military forces, 90
Millerand, 46
Minorities, 116, 118; power of, 12; protection of, 147, 156
Minority party, 18
Mittelstandsbund, 210
Money, shortage of, 63
Monroe Doctrine, 86, 88, 146
Morocco, 100
Munich trial, 15, 20, 210; *see Hitler*
Mutualism, 76
Napoleon, foreign policy of, 141
Napoleon III, 142
Nation, as a unity, 132
National Assembly, 121
National consciousness, 112, 194
National-Liberal Association, 18
National People's party, German (German Nationals), 15, 16, 17, 18, 22
National Radicals, 17, 22
National Socialistic German Workman's party, 15
Nationalism, 45, 77, 78, 105, 106; in the Hitler party, 15
Nationality, 111, 137; French, English, Dutch, 140; principle of, 124, 126, 129, 134, 139 f., 144
Negro problem, 127
Neutrality, violation of Belgian, 40
Newspapers, reduction of, 23
Niemeyer, Theodor, 177
Nietzsche, Friedrich Wilhelm, 163
Nitti, 70, 126
Novalis, 96
"November criminals," 15
Noyes, 83, 197

INDEX

- Over-nations, repudiation of, 127
Pacifism, 79, 98
Palatinate, the, 195, 196, 197
Pan-German movement, 202
Paris Economic Conference, 78
Paris Passport Conference, 93
Paris Peace Conference, 39, 42, 46
Particularism, 207, 208
Parties, 23; political, 19
Patriotism, 191
Paul's Church: Assembly at, 162; constitution, 157, 158
Peace, 79, 85; conditions of, 27, 49; translating, 48; negotiations, 57; without annexations, 143
Peace Decree of the All-Russian Congress of Workmen's and Soldiers' Deputations, 143
Peace Negotiations, Program for the, 41
"Peace, Report to the Imperial Cabinet on the Financial Conditions of," 48
Penalties, 33
People, 134; *see* State, Nation, etc.
Permanent Court of International Justice, 94, 125
Philippine question, 112
Phillipson, Coleman, 36
Plebiscite, 10, 92, 118, 119, 123, 142, 145, 184, 221
Poincaré's reparation plan, 42
Poland, 116, 118, 119, 125; German tenants in, 94, 128
Poles, 116, 118, 124
Polish Corridor, 119
Polish sovereignty, 203
Pomerania, 196
Posen, 128
Preuss, Professor Hugo, 201, 204, 220
Pronunciamento, 98
Prussia, 10, 197
Prussian hegemony, 199, 200, 204, 215, 216
Prussian Military party, 12
Quidde, 96
Raditch, Stephen, 117
Railroads, 65, 66
Ranke, 140
Rapallo treaty, 20, 90
Rathenau, Walter, 211, 221
Red Cross, 58
Redslob, 130, 132, 154
Reich, 17, 153
Reichsland, 200
Reichsrat, 160, 204, 217
Reichstag, 17, 18, 19, 21, 91, 92, 97, 102, 122, 161, 166, 182; confidence of the, 167; elections of, 119, 209; old, 158
Reichswehr, 178, 211, 221
Reinsch, Paul S., 103
Renan, Ernest, 129, 132
Renner, Karl, 132, 133
Rentenmark, 63
Reparation Commission, 46, 47, 68, 69, 168, 169; American delegation, 47

GERMANY IN TRANSITION

- Reparation question, 33, 34, 50, 125; Dawes plan, 67, 68; effect of, 49; exports a basis for, 68; final sum, 66; German attitude toward, 49, 52, 54; and German liberty, 49, 53; London plan, 55, 64; plans, 57; problem, 44, 57, 68, 69, 77; and question of guilt, 52
- Réparations*, 33, 34, 43, 44, 47, 48, 56, 91; special claim of Belgium, 41
- Repko, Eike von, 107
- Representation, unit of, 10; proportional, 10
- Republic, the new German, 10
- Revolution, 6, 179; the conception of, 6
- Rhine, occupation on the, 55; people expelled, 60; provinces, 195, 196
- Right wing of German party system, 16, 18, 24, 91, 183
- Rights, fundamental, 155, 162, 164, 181
- Roumania, 117, 124, 125
- Rousseau, Jean Jacques, 189
- Ruhr: inhabitants, 118; invasion, 22, 42, 43, 56; occupation, 57, 68, 92, 95; opposition on the, 20; people expelled, 60, 67
- Russia, 96, 134; Czarist, 123; Rapallo treaty with, 20, 90; Soviet, 12, 22, 87, 125, 163
- Russian Federated Soviet Republic, 125
- Russians, 116; White, 116
- Ruthenians, 116
- Saar, 195; Commission, 95; conditions in, 92; inhabitants of the, 118; mines, 41; problem, 120
- Sachsen-Coburg-Gotha, 203, 204
- Salzburgers, 123
- Sanctions*, 33, 34, 41, 43, 44, 56, 91, 172; compulsion of, 42; definition of, 39, 42; penal character of, 42; policy of, 22, 33, 55, 67; system of, 68
- Sassanoff, 220
- Scheinblüte*, 63
- Schelling, 96
- Schlageter, execution of, 22
- Schlegel, 96
- Schleiermacher, 96
- Schleswig, North, 118
- Schücking, 96, 98
- Science, 3, 5, 6, 61, 62, 79, 83; abstract, 7; independence of, 81; political, 5, 7
- Secht, General von, 221
- Seisser, 209
- Self-determination, 113, 120, 136; and democracy, 142; and Germany, 111; principle of, 77, 124, 126, 156; right of, 144, 193
- Self-government, 193, 195
- Separatism, 189, 195, 196, 206; Prussian, 197, 198, 205
- Separatistic movement, 119, 140, 195
- Serbian state, 117
- Serbians, 116
- Seydel, von, 215
- Shotwell, Professor, 43

INDEX

- Simons, Dr., German minister, 50, 51, 170
Slavs, South, 117
Slovakians, 115
Slovenes, 116, 117
Smuts, General, 47
Social Democrats (United Social Democratic party), 14, 21, 91, 210
Socialists, Independent, 19, 21, 163; majority, 14, 21
Sovereignty, 53, 54, 84
Spa, 46
Spain, 17
Spanish-American War, 88
Spartacists, *see* Communists
Spengler, Oswald, 70
State, 25, 111, 134, 137, 142, 192; conception of, 173, 189; multi-nationality, 115; outside factors, 30
Steiermark, 119
Stein, Freiherr von, 223
Stier-Somlo, Professor, x
Stinnes-Lubersac Treaty, 176
Stresemann, 18, 123
Strikes, 64
Strupp, 124
Submarine warfare, 101
Sugar, 65
Suttner, Baroness von, 96
Sweden, 124
Switzerland, 62, 131
talio, idea of, 41
Tax Law, Third Emergency, 59, 173, 174, 222
Taxes, income, 66
Tenants' party, 18
Thuringia, 204
Trade, 79, 80, 83; German, 66
Traffic conferences, 93
"Transfer proceedings," 66
Transitory Law, 161
Treaties, peace, with China, 90; with France, 100; international, 80; with Switzerland, 101; with United States, 90
Treaty of arbitration and conciliation, 101; German-Swiss, 102; of St. Germain, 122; Stinnes-Lubersac, 176; world-arbitration, 101; of Versailles, 3, 20, 24, 26, 27, 28, 34, 44, 47, 49, 51, 52, 82, 85, 97, 99, 120, 122, 126, 153, 169, 171, 181; *see* Versailles
Treipel, 216
Treitschke, Heinrich von, 163
Trotzki, 134 f., 143
Turkish-Italian War, 34
Turkish minorities, 117
Turks, 124
Tyrol, South, 119
Tyrolese, 123
Ukraine, the, 125
Ukrainians, 124
Under-nations, repudiation of, 138
Unemployment, 175
Unions, Public International, 103; trade, 176; workers', 174
Unitarianism, 6, 184, 195, 199, 204, 215

GERMANY IN TRANSITION

- United States, 56, 61, 87, 88, 96, 112, 113, 130, 146, 157, 176, 206, 215, 220; foreign policies, 86; principle of isolation, 86, 87; spoils system, 179
Unity, economic, 68, 190; German, 220
Universalism, 77, 80, 85, 105
University: of Berlin, 62; of Chicago, 61
Upper Silesia, 202 f.; question of division, 89, 92, 95

Valentin, Veit, 96, 163
Vanderlip, Frank, 12
Vanderpol, 39
Versailles, 48; Peace Conference, 101
Versailles, Treaty of, 3, 20, 24, 26, 27, 28, 35, 36, 37, 39, 41, 44, 49, 51, 52, 82, 85, 90, 97, 120, 122, 126, 153, 169, 171, 181; debts, 68; Germany forced by, 53; influence of, 168; interpretation of, 56; penal clauses, 40; question of guilt, 40, 50; ratification of, 170; reparation clauses, 70
Vienna, 125, 202
Vilna, 125
Vote, forms of, 10
Völkische Block, 210

Waldeck-Pyrmont, 203
War, 78, 101, 105, 142, 179, 220; bonds, holders of German, 174; burdens, 69; criminals, 24, 40, 181; damages, 45, 46; indemnities, 35, 36, 37, 39
Washington, George, 111, 148
Wehberg, Dr. Hans, 96, 98
Weimar, 48, 161, 162 ff., 180
Wendish, 118
West Prussia, 128
White Book, German, 197
White Slave Conference, 94
Wildholz, Colonel, 57
Wilson, President, 33, 88, 197; ideals of, 37; influence in Germany, 168; and Monroe Doctrine, 88; points, 56; principle of "the clean hand," 87
Wimbledon case, 94
Winkler, Dr. Wilhelm, x, 117
World-conscience, 76, 103
World-constitution, 82
World-court, 100
World-culture, 76
World-dominion, 99
World-federalism, 106
World-law, 82
World-war, 48; responsibility for, 38, 51, 52; victors of the, 24, 84
Wright, Professor Quincy, x

Zeigner, 179
Zeligowski, General, 126
Zentrum (Christian Social party), 17, 91, 210
Zorn, Professor, 98

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